TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 52

JAMES A. DOMBROWSKI, ET AL., APPELLANTS,

vs.

JAMES H. PFISTER, ETC., ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

FILED MARCH 23, 1964
PROBABLE JURISDICTION NOTED JUNE 15, 1964

SUPREME COURT OF THE UNITED STATES

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FOR THE EASTERN DISTRICT OF LOUISIANA

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., AUGUST 14, 1964

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 14019

Division B

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATIONAL FUND, INC., Plaintiffs,

—against—

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on UnAmerican Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana, Defendants.

COMPLAINT—Filed November 12, 1963

The plaintiffs for their verified complaint allege:

Parties

1. James A. Dombrowski is a citizen of the State of Louisiana and of the United States.

2. Southern Conference Educational Fund, Inc., is a corporation organized under the laws of the State of Tennessee, maintaining an office for business purposes in the State of Louisiana, whose purpose is to help to secure to Negro citizens the rights guaranteed to them under the United States Constitution and to end all forms of racial segrega-

tion and discrimination in the interest of Negro and white citizens of the Southern states.

3. Defendant James H. Pfister is a Louisiana State Representative and Chairman of the Joint Legislative Committee on UnAmerican Activities of the Louisiana Legislature. [fol. 2] He is sued individually and in his capacity as Chairman of said Committee. He is a citizen of the State of Louisiana.

4. Defendant Russell R. Willie is a Major in the Louisiana State Police Department. He is sued individually and in his capacity as Major of Louisiana State Police. He is a citizen of the State of Louisiana.

5. Defendant Jimmie H. Davis is Governor of the State of Louisiana. He is sued individually and in his capacity as Governor. He is a citizen of the State of Louisiana.

6. Defendant Jack P. F. Gremillion is Attorney General of the State of Louisiana. He is sued individually and in his capacity as Attorney General. He is a citizen of the State of Louisiana.

7. Defendant Thomas D. Burbank is Commanding Officer of the Division of Louisiana State Police. He is sued individually and in his capacity as Commanding Officer of the Division of State Police. He is a citizen of the State of Louisiana.

8. Defendant Jim Garrison is District Attorney for the Parish of Orleans, State of Louisiana. He is sued individually and in his capacity as District Attorney for the Parish of Orleans. He is a citizen of the State of Louisiana.

Jurisdiction of the Court

9. The jurisdiction of the Court over the Complaint arises under Title 28 U.S.C. 1331 (a), 1343 (3, 4), 2201, 2202, 2281; Title 42, U.S.C. 1971, 1981, 1983, 1985, and under the Constitution of the United States and in particular the First, Fourth, Fifth and Fourteenth Amendments thereto.

10. The amount in controversy, exclusive of interest and costs exceeds the sum or value of $10,000.00.

[fol. 3] *The Cause of Action*

11. The defendants herein, under color of certain statutes of the State of Louisiana have entered into a plan or conspiracy with other persons to the plaintiffs unknown to subject or cause to be subjected the plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

12. Pursuant to this plan or conspiracy the defendants have attempted to and threaten to continue to attempt to prosecute the individual plaintiffs under the color and authority of certain state statutes, namely Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq.

13. Defendants Pfister and Willie without any basis whatsoever in fact attempted to institute the prosecution of the individual plaintiffs by obtaining on October 2, 1963, certain warrants of arrest as well as search warrants based upon sworn affidavits alleging that the plaintiffs had conspired to violate the aforementioned statutes. These arrest and search warrants were served and acted upon by police officers under the control of the defendants herein. Despite the fact that the warrants of arrest were summarily vacated by a Judge of the Criminal District Court for the Parish of Orleans upon a holding that there was no probable cause for the issuance of the warrants, defendant Pfister nevertheless threatened and continues to threaten to attempt to obtain new prosecutions of the plaintiffs and to hold legislative hearings under the same statutes.

14. Specifically on Friday, November 8, 1963, the Joint Legislative Committee on UnAmerican Activities of the [fol. 4] Louisiana Legislature held an "open hearing" in Baton Rouge, Louisiana, at which hearing defendant Pfister, as well as counsel for the said committee, Rogers, utilized photostats of certain documents seized on October 4, 1963, under the alleged authority of the aforesaid search warrants. The Committee thereupon adopted a resolution

naming plaintiff corporation as a "communist front" and further calling upon defendant Garrision to prosecute officials of this corporation including plaintiff Dombrowski, under the provisions of the statutes herein cited. Pfister and Rogers have further publicly announced their intention of delivering to Garrision copies of documents illegally seized from the plaintiffs for the purpose of presenting the said copies to the Orleans Parish Grand Jury and for institution of criminal proceedings under the same statutes.

15. Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 are void and illegal on their face as applied to the plaintiffs herein, in that they violate the Constitution of the United States and in particular the First, Fourth, Fifth, Eighth and Fourteenth Amendments thereto. These state statutes violate the fundamental guarantees of free speech, press, assembly and the right to petition the government for a redress of grievances. They violate the guarantee of due process of law in that they are vague and indefinite and fail to meet the requirement of certainty in criminal statutes. They violate the prohibitions against ex post facto legislation and bills of attainder and represent an unconstitutional delegation of legislative power, all in violation of the Constitution of the United States.

[fol. 5] 16. The aforesaid state statutes are likewise void and illegal and of no force or effect in that they invade areas pre-empted to the exclusive jurisdiction of the United States by statutes and laws enacted by the Congress of the United States.

17. Pursuant to the aforesaid conspiracy and plan the defendants have threatened and continue to threaten to enforce the said unconstitutional void and illegal state statutes against the plaintiffs herein for the sole purpose of subjecting and causing to be subjected the plaintiffs and the members, friends and supporters of the plaintiff corporation to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

18. The plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting through peaceful and non-violent means to achieve the elimination of all forms of racial segregation in the states of the South and the State of Louisiana and to assist and encourage Negro citizens to exercise their rights to register and vote in federal and state elections. These objectives are specifically protected and guaranteed by the Constitution of the United States and the Thirteenth, Fourteenth and Fifteenth Amendments thereto. In their constant efforts to achieve these constitutionally protected efforts, the plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting to exercise rights guaranteed under the First and Fourteenth Amendments to freedom of speech, press, assembly and association and the right to assemble, associate and petition for a redress of grievances.

19. Unless this Court restrain the operation and enforcement of these void, invalid and unconstitutional state [fol. 6] statutes, the plaintiffs, and the members, friends and supporters of the plaintiff corporation will suffer immediate and irreparable injury.

The sole purpose, intention and effect of threatening to enforce said statute is to deter, intimidate, hinder and prevent the plaintiffs and the members, friends and supporters of plaintiff corporation from exercising their fundamental constitutional rights guaranteed under the First and Fourteenth Amendments in their efforts to enforce the equality under the law guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments.

Accordingly, unless this Court restrains the operation and enforcement of these void, invalid and unconstitutional state statutes, the plaintiffs and the members, friends and supporters of the plaintiff corporation will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising elementary and fundamental Federal constitutional rights.

20. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray for the following relief:

1. That pursuant to Title 28 U.S.C. 2281 and 2284 a three-judge Federal District Court be immediately convened to hear and determine this proceeding;

2. That a permanent injunction issue

(a) restraining the defendants, their agents and attorneys from the enforcement, operation or execution of Louisiana Revised Statutes 14:390 through 14:390.5 and Louisiana Revised Statutes [fol. 7] 14:358 through 14:388, and

(b) restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States.

3. That a Declaratory Judgment issue declaring that Louisiana Revised Statutes 14:390 through 14:390.5, and Louisiana Revised Statutes 14:358 through 14:388 are void on their face, null and void as violative of the Constitution of the United States.

4. That pending the hearing and determination of the prayers for permanent relief an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 or for instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

Plaintiffs respectfully pray that the above relief be granted.

Kunstler, Kunstler & Kinoy, 511 Fifth Avenue, New York 17, New York; and Milton E. Brener, 1304 National Bank of Commerce Bldg., New Orleans 12, Louisiana, Attorneys for Plaintiffs, by Milton E. Brener

[fol. 8] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

No. 14019

Division B

[Title omitted]

MOTION FOR CONVENING OF THREE-JUDGE COURT—
Filed November 12, 1963

The plaintiffs, James A. Dombrowski and Southern Conference Educational Fund, Inc., through their attorneys move that pursuant to Title 28 U.S.C. 2281 and 2284, a three-judge Federal District Court be immediately convened to hear and determine this proceeding; that pending the hearing and determination of the prayers for permanent relief, an interlocutory injunction issue restraining the defendants, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 or from instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

Milton E. Brener

[fol. 9] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
Civil Action No. 14,019

[Title omitted]

ORDER CONVENING THREE-JUDGE COURT—
November 14, 1963

The Honorable Frank B. Ellis, United States District Judge for the Eastern District of Louisiana, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable E. Gordon West, United States District Judge for the Eastern District of Louisiana, to serve with Judge Ellis as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 14th day of November, 1963.

Elbert P. Tuttle, Chief Judge, Fifth Circuit.

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
No. 14019
Division "B"

[Title omitted]

MOTION OF BENJAMIN E. SMITH AND BRUCE C. WALTZER AND ORDER FOR TEMPORARY RESTRAINING ORDER—November 18, 1963

On Motion of Benjamin E. Smith and Bruce C. Waltzer, Through Hubert, Baldwin & Zibilich, attorneys for plaintiffs herein, and

On Suggesting to the Court that plaintiffs Benjamin E. Smith and Bruce C. Waltzer, are now faced with the threat of imminent prosecution in the Criminal District Court for the Parish of Orleans under the provisions of R.S. 14:358 et seq. and 14:390 et seq. previously alleged herein to be unconstitutional and

On Further Suggesting to the Court that defendants herein intend immediate transfer, use and utilization of various documents seized from defendants under the provisions of the said statutes, and

On Further Suggesting to the Court that the Honorable [fol. 11] Malcolm V. O'Hara, Judge of the Criminal District Court for the Parish of Orleans and in charge of the present Grand Jury for the Parish of Orleans has pursuant to the said statutes instructed the Grand Jury to determine whether any violations are existent and

On Further Suggesting that the said Grand Jury has or will shortly have in its possession certain documents belonging to plaintiffs;

It Is Ordered by the Court that defendants James H. Pfister, Russell R. Willie, Jimmie H. Davis, Jack P. F. Gremillion, Colonel Thomas D. Burbank and Jim Garrison individually and in their official capacities, and others acting in concert with them are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of the said statutes or for any violation or alleged violation of said statutes, or from presenting evidence to the Orleans Parish Grand Jury for the purpose of showing a violation of said statutes.

~~It Is Further Ordered by the Court that the defendants, the Orleans Parish Grand Jury, Harry Plant, Foreman, John Leslie Bonnett, John Donelson Eagan, Andrew F. Gonzi, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago Sr., and Edward Alvis Hodge, individually and in their official capacities, and others acting in concert with them are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of R.S. 14:358 et seq and R.S. 14:390 et seq, or for any violations or alleged violations of said statutes or from considering any evidence concerning violations of said~~ [fol. 12] ~~statutes as members of the Grand Jury.~~

~~It Is Ordered by the Court that the defendant, the Honorable Malcolm V. O'Hara, individually and in his official capacity, and others acting in concert with him are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of the said aforementioned statutes or for any violations of alleged violations of said statutes or from further instructing the Grand Jury for the Parish of Orleans to investigate any alleged violations of the said statutes.~~

This order issued pending a hearing on the petition for intervention and on the motion for a preliminary injunction, but shall expire within ten (10) days by its own terms unless sooner rescinded or otherwise extended.

New Orleans, Louisiana, this 18th day of November, 1963.

John Minor Wisdom, Judge.

Respectfully submitted:

Hubert, Baldwin & Zibilich, 300 Oil & Gas Building, 1100 Tulane Avenue, New Orleans, Louisiana, Ja 5-2156, By: Robert Zibilich.

[fol. 13] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019

Division "B"

[Title omitted]

MOTION OF MILTON E. BRENER AND ORDER FOR TEMPORARY RESTRAINING ORDER—November 18, 1963

On Motion of Milton E. Brener, attorney for plaintiffs herein, and

On Suggesting to the Court that plaintiff, James A. Dombrowski, is now faced with the threat of imminent prosecution in the Criminal District Court for the Parish of Orleans under the provisions of R. S. 14:358 et seq. and 14:390 et seq., previously alleged herein to be unconstitutional, and

On Further Suggesting to the Court that defendants herein intend immediate transfer, use and utilization of various documents seized from defendants under the provisions of the said statutes, and

On Further Suggesting to the Court that defendants plan to present copies of said evidence as well as other evi-

dence to the Orleans Parish Grand Jury with a view toward criminal prosecution under said statutes of plaintiffs, and that plaintiffs will suffer irreparable injury unless a temporary restraining order issue herein pending hearing and determination of the application for interlocutory relief prohibiting and restraining the defendants and others acting in concert with them from in any manner taking any prosecutive action against plaintiffs under the provisions [fol. 14] of the said statutes or for any violation or alleged violation of the said statutes, or from presenting evidence to the Orleans Parish Grand Jury for the purpose of showing a violation of the said statutes,

It Is Ordered by the Court that defendants James H. Pfister, Russell R. Willie, Jimmie H. Davis, Jack P. F. Gremillion, Colonel Thomas D. Burbank and Jim Garrison, individually and in their official capacities, and others acting in concert with them/ ~~including the Orleans Parish Grand Jury~~ are hereby restrained and prohibited from in any way taking any prosecutive action against plaintiffs under the provisions of the said statutes or for any violation or alleged violation of said statutes, or from presenting evidence to the Orleans Parish Grand Jury for the purpose of showing a violation of said statutes.

This order is issued pending a hearing on the motion for a preliminary injunction, but shall expire within ten (10) days by its own terms unless sooner rescinded, or otherwise extended.

New Orleans, Louisiana, this 18 day of November, 1963.

John Minor Wisdom, Judge.

Respectfully submitted:

Milton E. Brener, Arthur Kinoy, Kunstler Kunstler and Kinoy.

[fol. 15] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 14019

Division B

[Title omitted]

ANSWER—Filed December 4, 1963

Now into Court through the undersigned Assistant District Attorney in and for the Parish of Orleans, State of Louisiana comes Jim Garrison, individually and as District Attorney in and for the Parish of Orleans, State of Louisiana, and in answer to plaintiff's numbered allegations contained in their complaint filed in the above entitled and numbered cause, respondent avers:

Parties

1. Denied for lack of sufficient information to justify a belief.

2. Denied for lack of sufficient information to justify a belief. Respondent calls for strict proof. Respondent fur-
[fol. 16] ther avers that Southern Conference Educational Fund, Inc. has as its principal objective the advancement of the interests of the world Communist movement through aiding, abetting, advising or teaching activities intended to overthrow, destroy, or to assist in the overthrow or destruction of the Constitutional form of the government of the State of Louisiana or of any political subdivision thereof by revolution, force, violence or other unlawful means. Southern Conference Educational Fund, Inc. is seeking by un-Constitutional means to overthrow or destroy the government of the State of Louisiana or any political subdivision thereof and to establish in place thereof a form of government not responsive to the people of the State of Louisiana under the Constitution of the State of Louisiana.

3. The allegations of Paragraph 3. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

4. The allegations of Paragraph 4. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

5. The allegations of Paragraph 5. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

6. The allegations of Paragraph 6. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

7. The allegations of Paragraph 7. of the complaint have no application to respondent Jim Garrison and respondent is not required to answer thereto.

8. Respondent Jim Garrison admits that he is District Attorney for the Parish of Orleans and that he is a citizen of the State of Louisiana.

[fol. 17] *Jurisdiction of the Court*

9. Denied. And further answering your respondent avers that any prosecution leveled against the plaintiffs herein is done so solely for the purpose of enforcing Louisiana Revised Statutes 14:358 through and including 390.8. Any intended prosecutions by the State of Louisiana have as their sole purpose the enforcement of the foregoing statutes and are in no way attempts to deny Constitutionally protected rights guaranteed white and negro citizens alike. Therefore, jurisdiction founded upon statutes designed for the prosecution of civil rights against encroachment on racial grounds is denied.

10. Denied. Respondent calls for strict proof.

The Cause of Action

11. Denied. Your respondent denies knowledge of any plan or conspiracy or his involvement in any plan or con-

spiracy intended to deny plaintiffs' rights, privileges and immunities under the Constitution of the United States.

12. Your respondent denies knowledge of or involvement in any plan or conspiracy whereby plaintiffs are to be denied Constitutional rights through prosecution under color and authority of Louisiana Revised Statutes 14:358 through and including 390.8. Any actions of your respondent herein are those taken as a representative of the public of Orleans Parish and as chief prosecuting officer of the Parish of Orleans charged with responsibility for the enforcement of provisions of the Louisiana Criminal Code.

13. Your respondent denies knowledge of or involvement in any plan or conspiracy to deny defendants herein Constitutionally protected rights. Your respondent denies any involvement in the activities of Pfister and Willie and denies his involvement in any of the activities described in Paragraph 13. of plaintiffs' complaint.

[fol. 18] 14. Respondent denies any involvement in the activities described in Paragraph 14. of plaintiffs' complaint. Respondent Jim Garrison denies having been called upon to prosecute officers of the Southern Conference Educational Fund, Inc. including plaintiff Dombrowski. Respondent Jim Garrison has received copies of documents legally seized from plaintiffs herein as well as certain original documents. Respondent avers that copies of this material or the originals thereof will be made available to plaintiffs herein on proper request.

15. Denied. Respondent calls for strict proof.

16. Denied. And further answering respondent avers that by statutes of the Congress of the United States and by interpretation of those statutes by the Courts of the United States, the States have not been excluded from exercising their fundamental right of self preservation by prosecuting subversives.

17. Denied.

18. Denied. And further answering respondent avers that in seeking to prosecute plaintiffs herein he has no

other objective than the enforcement of provisions of Louisiana Revised Statutes 14:358 through and including 390.8. Your respondent specifically denies any efforts on his part to deny persons fundamental rights guaranteed by the Constitution of the United States.

19. Denied.

20. Denied.

Wherefore, respondent prays that:

1. Plaintiffs' complaint be dismissed with prejudice. Plaintiffs to pay all costs.

2. The temporary restraining order signed by the Honorable John Minor Wisdom on the 18th day of November, 1963 be dissolved and vacated.

[fol. 19] 3. That any and all injunctive relief prayed for by plaintiffs herein be denied.

4. That a declaratory judgment issue declaring Louisiana Revised Statutes 14:358 through and including 390.8, Constitutional under the provisions of the Constitution of the United States of America.

5. And for all general and equitable relief.

Jim Garrison, individually and as District Attorney in and for the Parish of Orleans, District Attorney's Office, 2700 Tulane Avenue, New Orleans, Louisiana, and William A. Porteous, III, Assistant District Attorney, District Attorney's Office, 2700 Tulane Avenue, New Orleans, Louisiana, by William A. Porteous, III.

[fol. 20] Affidavit of Service (omitted in printing).

[fol. 21] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14,019

Division "B"

[Title omitted]

MOTION TO DISMISS—Filed December 9, 1963

Now into Court come defendants, Jimmie H. Davis, Governor of the State of Louisiana, Jack P. F. Gremillion, Attorney General of the State of Louisiana, Thomas D. Burbank, Commanding Officer of the Division of Louisiana State Police and Russell R. Willie, Major in the Louisiana State Police Department, individually and in their official capacities, through undersigned counsel, who move that this proceeding be dismissed upon the following grounds:

1.

The complaint fails to state a claim upon which relief can be granted.

2.

This Honorable Court is without jurisdiction in this matter.

Respectfully,

Jack P. F. Gremillion, Attorney General for the State of Louisiana; M. E. Culligan, Assistant Attorney General; John E. Jackson, Jr., Assistant Attorney General.

[fol. 22] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

No. 14019

Division B

[Title omitted]

PETITION OF INTERVENTION AND COMPLAINT—
Filed December 9, 1963

The petition of intervention and complaint of Benjamin E. Smith and Bruce C. Waltzer, plaintiffs in intervention for their verified petition allege that:

I.

Benjamin E. Smith and Bruce C. Waltzer are both citizens of the State of Louisiana and the United States of America and are attorneys at law admitted to practice before the State and Federal bars;

II.

That plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer, were both illegally arrested on the same date as plaintiff, James A. Dombrowski and under color of warrants of arrest similarly drawn as to those affecting James A. Dombrowski;

III.

That records and confidential legal files belonging to plaintiffs in intervention, Benjamin E. Smith and Bruce C. [fol. 23] Waltzer, were illegally seized under color of search warrants similarly drawn as to those affecting James A. Dombrowski and Southern Conference Educational Fund, Inc.;

IV.

That plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer are also under threat of imminent prosecution and harassment by Legislative bodies under color of authority granted in Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq., and are further under imminent danger of having action taken by the duly constituted Grand Jury for the Parish of Orleans.

Petitioners are plaintiffs in intervention and show that after their illegal arrest they applied to the Criminal District Court for the Parish of Orleans for a preliminary hearing pursuant to State law under proceedings entitled Benjamin E. Smith, et al. versus State of Louisiana, et al., No. 181-975, Section "E"; that said hearing was held upon their application and the Judge of the said Court discharged plaintiffs in intervention for the reason that no legal evidence was adduced sufficient to bind them over and further no legal evidence was adduced sufficient to justify the issuance of the warrants of arrest previously mentioned herein;

That James A. Dombrowski filed a similar pleading in the State court which was consolidated for hearing with the pleadings filed by Benjamin E. Smith and Bruce C. Waltzer and James A. Dombrowski was similarly discharged.

Plaintiff in intervention, Benjamin E. Smith serves as Treasurer of Southern Conference Educational Fund, Inc., while James A. Dombrowski serves as its Executive Director. Plaintiff in intervention, Bruce C. Waltzer is a friend and supporter of Southern Conference Educational [fol. 24] Fund, Inc., and has appeared as such at some of its public functions.

Plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer as attorneys at law have represented and counselled the legal interest of Southern Conference Educational Fund, Inc.

For their verified complaint, plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer allege:

I.

That they adopt all of the allegations contained in the petition entitled James A. Dombrowski & Southern Conference Educational Fund, Inc., versus James H. Pfister, Russell R. Willie, Jimmie H. Davis, Jack P. F. Gremillion, Colonel Thomas D. Burbank, Jim Garrison;

II.

Further, that they are informed and believe that various documents and confidential legal files seized from them have been subpoenaed by the Grand Jury for the Parish of Orleans and that the said Grand Jury could meet momentarily for purposes of returning either indictments or No True Bills under 14:358 et seq. and 14:390 et seq., which statutes plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer reiterate are unconstitutional on their face;

III.

That plaintiffs in intervention, Benjamin E. Smith and Bruce C. Waltzer are informed and believe that the Honorable Malcolm V. O'Hara, Judge of the Criminal District Court, presently in charge of the Orleans Parish Grand Jury has pursuant to the said aforementioned statutes, which plaintiffs reiterate are unconstitutional, instructed the Grand Jury for the Parish of Orleans to investigate whether there are or have been any violations under the said statutes;

[fol. 25]

IV.

Plaintiffs in intervention Benjamin E. Smith and Bruce C. Waltzer aver that it is necessary not only that they be permitted to intervene in this said suit; but that they be permitted to join as parties defendant the Foreman and individual members of the Orleans Parish Grand Jury, namely: Messrs. Harry Plant, Foreman, John Leslie Bonnett, John Donelson Eagan, Andrew F. Gonczi, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James

Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge, and the Honorable Malcolm V. O'Hara, Judge of the Criminal District Court, who is presently in charge of the Orleans Parish Grand Jury.

Wherefore, plaintiffs in intervention pray for the following relief:

1. That they be permitted to file this petition for intervention and complaint and thus join as parties plaintiffs herein;

2. That the Foreman of the Orleans Parish Grand Jury, Mr. Harry Plant, and individual members, namely: Messrs. John Leslie Bonnet, John Donelson Eagan, Andrew F. Gonczi, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge, and the Honorable Malcolm V. O'Hara, Judge, be made parties defendant herein;

3. That a permanent injunction issue:

(a) Restraining the defendants, including those sought to be joined, their agents and attorneys from the enforcement, operation or execution of Louisiana Revised Statutes R.S. 14:358 and R.S. 14:390, including those individual members of the Grand Jury, namely, John Leslie Bonnet, John Donelson Eagan, Andrew F. Gonczi, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, [fol. 26] Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge, and the Foreman, Harry Plant, of the Orleans Parish Grand Jury and the Honorable Malcolm V. O'Hara, Judge.

(b) Restraining the defendants, and those sought to be joined, their agents, and attorneys from impeding, intimidating, hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the rights, privileges and immunities guaranteed to them by the Constitution and laws of the United States.

4. That a Declaratory Judgment issue declaring that Louisiana Revised Statutes 14:390 through 14:390.5, and Louisiana Revised Statutes 14:358 through 14:388 are void on their face, null and void as violative of the Constitution of the United States.

5. That pending the hearing and determination of the prayers for permanent relief an interlocutory injunction issue restraining the defendants and those sought to be joined, their agents, attorneys and all others acting in concert with them from enforcing in any way the provisions of Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 or for instituting or undertaking any proceedings whatsoever pursuant to said statutes against the plaintiffs herein.

Plaintiffs respectfully pray that the above relief be granted.

Hubert, Baldwin & Zibilich, 300 Oil & Gas Building, 1100 Tulane Avenue, New Orleans, Louisiana, Ja 5-2156, By: Robert Zibilich.

[fol. 27] *Duly sworn to by Benjamin E. Smith and Bruce C. Waltzer, jurats omitted in printing.*

[fol. 28] ORDER

Considering the verified petition herein, it is ordered by the Court that Benjamin E. Smith and Bruce C. Waltzer be and they are hereby permitted to file this their petition for intervention and complaint and that they be and are hereby joined as parties plaintiffs herein.

It is further ordered by the Court that the Foreman of the Orleans Parish Grand Jury, Harry Plant, and the individual members, namely: John Leslie Bonnett, John Donelson Eagan, Andrew F. Gonczi, Jr., Rufus Louis Matthews, John Thomas McNamara, George Josiah Marsh, Joseph Hillary Morvant, Lloyd H. Pierre, James Craig Roth, Robert Mallard Seago, Sr. and Edward Alvis Hodge,

and the Honorable Malcolm V. O'Hara, Judge, be and they are hereby made parties defendants herein.

New Orleans, Louisiana.

This ..... day of ....., 1963.

.....

Judge

[fol. 29]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019
Division "B"

JAMES A. DOMBROWSKI, etc., Plaintiffs,

against

JAMES H. PFISTER, etc., Defendants.

OFFER OF PROOF—January 10, 1964

Plaintiffs and intervenors offer to prove that if evidence were admitted by affidavit and/or oral testimony upon the motion for interlocutory injunction, the following facts would be proved thereby:

1.

The sole and exclusive purpose of the Southern Conference Educational Fund, Inc. is the elimination of segregation and all forms of discrimination based on race in the South through education and other non-violent methods.

2.

The sole and exclusive interest of plaintiff, Dr. James A. Dombrowski, a doctor of philosophy in theology, in political action is identical to that of S.C.E.F. of which he is and for many years has been Executive Director.

3.

Benjamin Smith, intervenor, is Treasurer of the S.C.E.F. He is and has been active in advocating elimination of segregation in the South by non-violent and constitutional means. In addition, he is a practicing attorney and has been actively engaged in Civil Rights litigation and has participated in various legal proceedings seeking the elimination of segregation in its various phases in the New Orleans Area.

[fol. 30]

4.

Bruce Waltzer is the law partner of Benjamin Smith and has likewise participated in advocacy of elimination of segregation by non-violent and constitutional means and has participated in litigation seeking the termination of segregation in its various aspects in the New Orleans Area. In addition, he is not, and never has been an officer of S.C.E.F.

5.

S.C.E.F. is not and never has been a subversive organization; does not and has never advocated the overthrow of the Government of Louisiana or of the United States.

6.

Neither James A. Dombrowski nor Benjamin Smith nor Bruce Waltzer are, nor have they ever been, communists or communist controlled or under the discipline of the communist party.

7.

Neither Dombrowski, Smith nor Waltzer are, nor have they ever been, subversive and do not and have never ad-

vocated the overthrow of the government of the State of Louisiana or of the United States.

8.

There is no reasonable justification for inferring anything contrary to the above facts, which facts become self-evident upon investigation of the activities of any of the parties herein, and that these facts are, in truth and in fact, well known to the defendants in this case.

9.

On October 5, 1963, defendants and others acting with them staged a raid upon the place of business of Southern Conference Educational Fund, Inc. at 822 Perdido Street in the City of New Orleans, and upon the private homes of [fol. 31] Dombrowski, Smith and Waltzer, and further searched the private automobiles of Dombrowski, Smith and Waltzer, and in addition raided the law offices of Smith and Waltzer and confiscated therefrom certain legal files.

10.

The said raids were accomplished pursuant to warrants signed on October 2, 1963, purporting to authorize the arrest of the parties and the search of the premises described therein.

11.

The said warrants were issued as a result of affidavits alleging violations of R.S. 14:358 et seq. and 14:390 et seq. and were executed by persons working in concert with defendants. These affidavits contained misrepresentation of material facts, and further contained many and significant omissions of fact, which misrepresentations and omissions were for the purpose of procuring warrants to which defendants would not otherwise have been entitled.

12.

The warrants themselves are invalid on their faces as are the affidavits upon which they were issued.

13.

Tremendous quantities of materials were seized which were not described in the warrants; tremendous quantities of materials were seized which could have no possible bearing upon any legitimate purpose of defendants, and could only have been seized as a result of an intent to harass and intimidate plaintiffs and intervenors and to destroy the effectiveness of their work. Included among such materials are approximately $100 in postage stamps; approximately 1500 to 2000 books and pamphlets, including many books [fol. 32] from Dombrowski's personal library on literature, philosophy, religion and sociology, etc.; Dombrowski's personal check book; pictures from the office wall of S.C.E.F. including a photograph inscribed by Mrs. Eleanor Roosevelt; and the complete inventory of thousands of pamphlets, brochures and other literature concerning integration; several thousand blank receipts, numbered forms and blank stationery and letterheads.

14.

Defendants also seized the entire mailing list of S.C.E.F. consisting of approximately eight to ten thousand names of contributors and friends of S.C.E.F.

15.

The purpose of the raids, which was to effectively destroy the work of plaintiffs and intervenors in the field of Civil Rights, is evidenced, in addition to the complete lack of any evidence of communism or subversion on the part of the parties herein, by statements made at and about the time of the raids by defendants and their authorized attorneys and representatives, which statements were widely reported in the public press, radio and television to the effect that plaintiffs and intervenors were "engaged in racial agitation" and that the work of defendants could not be coordinated with the FBI even though they had confidence in the FBI, for the reason contained in the following public statement of defendants: "We knew that if we told the FBI about this raid, they would have to tell Bobby

Kennedy. We cannot trust him and we expect him to tell his friend, Martin Luther King."

The purpose is further evidenced by the release by defendants of certain documents containing the identity of a prominent contributor to S.C.E.F. to The Councilor, a segregationist newspaper, which information was publicized in its issue of November, 1963.

[fol. 33]

16.

Examination of the documents seized reveals conclusively that plaintiffs and intervenors are engaged in no illegal activities. The evidence seized affirmatively shows that the parties are engaged in legitimate Civil Rights activities and that no documents contained any evidence whatsoever of communism or communist activity or subversion or advocacy of the overthrow of the State or Federal Government.

17.

On October 25, 1963, on motion of Dombrowski, Smith and Waltzer, a preliminary hearing was held in Section "E" of the Criminal District Court for the Parish of Orleans for the purpose of inquiring into the validity of the arrests of movers. After hearing evidence, the Court summarily vacated the warrants of arrest, holding them to be invalid, and ordered the discharge of Dombrowski, Smith and Waltzer.

18.

Despite the lack of evidence, defendants have stated their intention of criminally charging and/or obtaining grand jury indictments of Dombrowski, Smith and Waltzer, for violation of R.S. 14:358 et seq. and 14:390 et seq. This intention has been expressed in a resolution of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature, and via the public press, radio and television, by other of defendants and their attorneys. Representatives of defendant Jim Garrison have expressed their intention of presenting evidence to the Grand Jury.

19.

Indictment of Dombrowski, Smith and Waltzer could, and is calculated to curtail the Civil Rights activities of the said individuals and of the S.C.E.F. as effectively as could actual conviction upon presentment of proper evidence. [fol. 34] This is true in that charges and indictments of officers and members of Civil Rights organizations for alleged communist or subversive activity deter many from participation in or contribution to them, both by those who believe such charges to be true, and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged. The fund-raising ability of S.C.E.F. would be greatly hampered as would the number of active participants in its programs.

20.

The law practice of Smith and Waltzer, including their ability to handle Civil Rights cases, could be and has been seriously affected adversely as the result of criminal charges or indictment alleging communist or subversive activity, the complete falsity of such charges being of little consequence.

21.

Practically all groups, organizations and associations of any significance or consequence, active in the field of Civil Rights, have at some time in the past been identified or cited, albeit on insufficient evidence and unwarranted conclusions, as communist or communist front or communist dominated organizations, and would consequently fall within the purview of R.S. 14:358 and 14:390.

22.

The presumption set forth in R.S. 14:359 (3) is unreasonable in that the reports of committees and subcommittees have been made on the basis of incomplete and untrustworthy evidence not subject to confrontation or cross-

[fol. 35] examination and in that they contain unjustified inferences and conclusions.

23.

Compliance with the statute, particularly the registration requirements thereof, is impossible in that there exists no readily ascertainable compilation of all organizations that have been cited or identified as communist front or communist dominated organizations, and ascertainment of the identity of all such organizations is virtually impossible.

24.

The origin of the statute above numbered and the setting in which they operate indicate their discriminatory purpose and application to Civil Rights organizations.

Plaintiffs and intervenors further offer to introduce the testimony of the following witnesses who will testify substantially in the manner as set forth on the affidavits which are attached hereto and made part hereof:

Dr. James A. Dombrowski	Rev. Fred L. Shuttlesworth
Benjamin Smith	Rev. C. T. Vivian
Bruce Waltzer	Bishop Edgar A. Love
Dr. Martin Luther King, Jr.	Dr. Herman H. Long

Plaintiffs further offer to prove each and every factual allegation contained in the complaints herein.

Kunstler, Kunstler & Kinoy, By Arthur Kinoy, Milton E. Breher, A. P. Tureaud, Jr., Attorneys for Plaintiffs.

Hubert, Baldwin & Zibilich, By Robert Zibilich, Attorneys for Intervenors.

[fol. 36]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Georgia
County of Fulton

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Martin Luther King, Jr., who after being first duly sworn, did depose and say:

That he is President of the Southern Christian Leadership Conference and Co-Pastor of Ebenezer Baptist Church in Atlanta, Georgia; that he was one of the founders of Montgomery Improvement Association and for the past several years has been a leader of this movement; that he has authored several books on the subject of Civil Rights and has devoted his entire adult life to the cause of Civil Rights as he considers the same to be an expression of Christian Gospel;

That he has known Dr. James A. Dombrowski and has been well acquainted with him for the past eight years;

Personally Came and Appeared:

[fol. 37] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all

forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, The Southern Patriot, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 38] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use

of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee mak- [fol. 39] ing such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including

raids and arrests of officers and officials, seizure of books, records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 40] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Martin L. King, Jr.

Sworn to and subscribed before me this 5 day of December, 1963.

Lillian D. Watkins, Notary Public. My commission expires Feb. 20, 1967.

[fol. 41]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Alabama
County of Jefferson

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

Fred L. Shuttlesworth, who, after being first duly sworn, did depose and say:

That he is the President of the Southern Conference Educational Fund, Inc. and has held this office since April, 1963; that he is Secretary of the Southern Christian Leadership Conference; that he is President of the Alabama Christian Movement for Human Rights, and that he is a founder of that organization;

That he is an Officer of the National Baptist Convention and Pastor of Baptist Churches in Birmingham for many years; that he is now Pastor of Revelation Baptist Church in Cincinnati; that he has been an active leader of the Civil Rights Movement in Birmingham and a member of many boards and commissions appointed by the President in connection with civil rights;

That he has been associated with S.C.E.F. as an officer or Board Member for approximately ten years and that he is a friend and has been well acquainted with Dr. James A. Dombrowski during this ten year period;

[fol. 42] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, The Southern Patriot, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 43] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee mak- [fol. 44] ing such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including raids and arrests of officers and officials, seizure of books, records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 45] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Rev. Fred L. Shuttlesworth.

Sworn to and subscribed before me this 5th day of December, 1963.

Jacqueline J. Wallace, Notary Public. My commission expires March 10, 1964.

[fol. 46]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Alabama
County of Jefferson

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

The Reverend C. T. Vivian who, after being first duly sworn, did depose and say:

That he is a Baptist minister and has officiated in churches in Nashville and Chattanooga;

That he is now Director of Affiliates of the Southern Christian Leadership Conference; that he has been a member of the Board of Directors of Southern Conference Educational Fund, Inc. for approximately one year and has been intimately associated with the policy making functions of S. C. E. F.; that he has known Dr. James A. Dombrowski for approximately three years;

[fol. 47] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all forms of discrimination based on race in the South through

education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, The Southern Patriot, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the variou aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 48] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use of the press and speech as means of mass communication

for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee mak- [fol. 49] ing such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including raids and arrests of officers and officials, seizure of books,

records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 50] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Rev. C. T. Vivian.

Sworn to and subscribed before me this 5th day of December, 1963.

Jacqueline J. Wallace, Notary Public. My commission expires March 10, 1964.

[fol. 51]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Maryland
County of Baltimore

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

Bishop Edgar A. Love, who, after being first duly sworn, did depose and say:

That he is Bishop of The Methodist Church in Baltimore and that he is the immediate Past-President of the Southern Conference Educational Fund, Inc.; that he served as President for approximately four years, and that prior to that he was Vice-President of S. C. E. F., prior to which he was a member of the Board of Directors; that he has consequently been intimately associated with the policy making functions of S. C. E. F. for many years;

That he has personally known Dr. James A. Dombrowski and has been well acquainted with him for approximately ten years;

[fol. 52] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all

forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, The Southern Patriot, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 53] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use

of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee mak- [fol. 54] ing such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including raids and arrests of officers and officials, seizure of books,

records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 55] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Edgar A. Love.

Sworn to and subscribed before me this 4th day of December, 1963.

D. Benton Grothaus, Jr., Notary Public. My commission expires May 3, 1965.

[fol. 56]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of .....
County of .....

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and County aforesaid,

Personally Came and Appeared:

Dr. Herman H. Long who, after being first duly sworn, did depose and say:

That he is Director of Race Relations of the Board of Homeland Ministries of the United Church of Christ; that he is President-elect of Talledega College, Talledega, Alabama; that he is Past-President of the National Association of Interracial Officials.

That he is Vice-President of the Southern Conference Education Fund, Inc. and a member of the Board of Directors of S.C.E.F. since approximately 1946, and that he has actively participated in the work of S. C. E. F. since approximately 1942.

That he has been a close personal friend of Dr. James A. Dombrowski since 1942 and that he has worked closely with the said Dombrowski in the field of race relations since that time.

That he has been intimately associated with the policy making function of S.C.E.F. for many years.

[fol. 57] That the function of the Southern Conference Education Fund, Inc. is to eliminate segregation and all forms of discrimination based on race in the South through education and other non-violent methods. Other than that, S. C. E. F. urges no political philosophy and takes no political action. S. C. E. F. has never, to my knowledge, urged the election or defeat of any candidate for public office or advocated the passage or defeat of any legislation, other than in the field of civil rights, or advocated or opposed any political program except the elimination of segregation based on race. The major purpose of S. C. E. F. has been similar to that of the Church advocacy of the Hebraic Christian ethical tradition.

That more specifically the S. C. E. F. attempts to effectuate its purpose by sponsoring integrated conferences bringing together Southerners of similar purpose to exchange information on how to end segregation and discrimination. Such conferences have been held almost every year since 1938. S. C. E. F. publishes a monthly journal, The Southern Patriot, which reports activities and aspirations of people and organizations working for integration, and this publication has been published continuously since 1942. S. C. E. F. engages in the printing and distribution of brochures, pamphlets and reports on the various aspects of segregated living with suggestions for action to eliminate it. Another activity of S. C. E. F. is the stimulation of local and state groups designed to combat segregation by direct action or political action, or both. It operates a news service which provides information on integrationist activities to numerous publications throughout the nation. [fol. 58] It provides funds for test cases to establish rights of minorities. It engages in campaigns to inform people of their rights of free speech, assembly and petition under the First Amendment to the U. S. Constitution.

That affiant knows Dr. James A. Dombrowski to have made many and significant contributions to the activities of S. C. E. F. and to the fight against segregation in general. To the best of my knowledge, his entire activity is

and has been the advocacy of Civil Rights as an implementation of the Hebraic Christian tradition of brotherhood.

That the chief weapon of S. C. E. F., like other organizations whose aim is to combat racial segregation, is the use of the press and speech as means of mass communication for dissemination of ideas, including the printing and distribution of literature and TV and radio appeals. The effectiveness of such organizations generally, and of S. C. E. F. in particular, requires the active participation of thousands of like persons of good standing in their communities throughout the country, particularly in the South, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

That it is known to me to be a fact based upon my experience in the field of Civil Rights throughout my adult life, that there is a general reluctance on the part of a very large portion of the contributors and active participants of both races to be identified with Civil Rights movements because of the fear of being called communist or subversive, or fear of being linked with a group labeled communist or subversive regardless of the stature or lack of stature, or responsibility or lack of responsibility of the person, group, agency, official or legislative committee mak- [fol. 59] ing such accusation. The fear of such possible accusations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate.

That a large portion of the contributors to Civil Rights organizations in general and to S. C. E. F. in particular, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential. That the reason for this is the unpopularity of the cause espoused by such organization in the communities in which they reside. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or otherwise associate themselves with Civil Rights organizations such as Southern Conference Educational Fund, Inc.

That police action against Civil Rights organizations such as Southern Conference Educational Fund, including, raids and arrests of officers and officials, seizure of books, records and other documents, particularly lists of contributors, friends and members, investigations of such organizations and indictments or other criminal charges against officers and members, whether or not they result in conviction or even in trial, can effectively stymie the operation of the organization. They are well calculated to destroy the effectiveness of organizations such as Southern Conference Educational Fund in that, in addition to the tremendous expense involved to the organization, such raids, arrests, searches and seizures and investigations, [fol. 60] and particularly charges and indictments, greatly deter contributors and active participants, and that consequently, fund raising ability is seriously hampered and activity seriously lessened. The said raids, arrests, searches and seizures, and most particularly charges and indictments of officers and members for alleged communist or subversive activity deter many from participation or contribution, both by those who believe such charges to be true and by those who know them to be false, the latter as a result of their fear of public embarrassment by popular disapproval of their association with a group so charged; that consequently the work of such a Civil Rights organization as S. C. E. F. is practically as effectively hampered and stymied by charges and indictments as it would be by conviction of its officers or members.

Herman H. Long.

Sworn to and subscribed before me this 4 day of Dec., 1963.

(Signature illegible), Notary Public. My commission expires 1/25/64.

[fol. 61]

ATTACHMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Louisiana
Parish of Orleans

Before Me, the undersigned authority, duly qualified and commissioned in and for the State and Parish aforesaid, personally came and appeared:

Benjamin E. Smith and Bruce C. Waltzer who, after being first duly sworn, did depose and say:

That Benjamin E. Smith, an intervenor in the above cited matter is a duly licensed and qualified attorney at law, and is the Senior partner in the firm of Smith & Waltzer, New Orleans, Louisiana. He is a member of the Executive Board of the National Lawyers Guild; is a member of the Louisiana State Bar Association; and is Chairman of the Legal Committee for the Louisiana Civil Liberties Union. His firm is also legal counsel for United Packinghouse Food and Allied Workers, AFL-CIO and port counsel for the National Maritime Union, AFL-CIO.

Affiant Smith also serves as the Treasurer of the Southern Conference Educational Fund and was arrested along with James A. Dombrowski and Bruce C. Waltzer on October 4, 1963 while he (Smith) was attending a Bar Asso-

ciation meeting and seminar on Civil Rights and Negligence Law at the Hilton Inn, Jefferson Parish, Louisiana. Affiant Smith was arrested under a warrant of arrest based on an application made under oath by one Russell R. Willie, Major of the Louisiana State Police. At the time of his [fol. 62] arrest, Smith was searched, his automobile was searched, and his home at 1073 Robert E. Lee Blvd. was also searched under warrants of search. The arrest of Smith was carried out jointly by the State Police and by officers of the Sheriff's office of Jefferson Parish. The search of Smith's automobile was carried out by State Police with the permission of the New Orleans City police. Affiant Smith's home was searched by City and State police and by one Jack N. Rogers, an attorney employed as counsel of the Louisiana Joint Legislative Committee on Un-American Activities. The law offices of Smith and Waltzer in New Orleans was searched by City and State police under a warrant of search. All warrants hereinbefore referred to were issued by the Honorable Thomas N. Brahney, Criminal District Court Judge, and were obtained by probable cause affidavits executed by the said Willie and/or the said Rogers. Copies of these affidavits of application and warrants of search and arrest are attached to and made a part of this affidavit. The search of the law offices of Smith & Waltzer was carried out at gun point and all of the firm's legal files were inspected. The home of Benjamin E. Smith was approached by police officers armed with an ax, and during the search, his family was held incommunicado.

The home of Bruce C. Waltzer at 6500 Avenue C was also searched by City and State police, and affiant Bruce Waltzer was arrested at his home and transported to jail. Bruce C. Waltzer is also a member of the Louisiana State Bar Association and a duly qualified practicing attorney, and a Junior partner in the firm of Smith & Waltzer. Waltzer is also a member of the Legal Committee of the Louisiana Civil Liberties Union; and both Smith and Waltzer are active attorneys in the prosecution and defense of Civil Rights cases. No charge was ever issued following these arrests either by the District Attorney for [fol. 63] the Parish of Orleans, or the Grand Jury for the Parish of Orleans, or the Attorney General for the State

of Louisiana; and on October ....., 1963, affiants petitioned the Criminal District Court for the Parish of Orleans for a pre-trial hearing, so that whatever evidence existed against them could be brought to the attention of the Court. This hearing was held in Criminal District Court, Division "E", Parish of Orleans, on October 25, 1963 and affiants were discharged by the Judge on the basis that no evidence was adduced against affiants and that they should, therefore, be discharged. Copies of the search and arrest involving Bruce C. Waltzer and a transcript of the hearing in Section "E" of the Criminal District Court are all attached to and made part of this affidavit.

Following this, on November 8, 1963, the Louisiana Joint Legislative Committee on Un-American Activities met in Baton Rouge, Louisiana and excluding the public, but including the Press, interrogated a series of witnesses and introduced various copies of documents seized as a result of the searches made at the time of the arrest of the affiants and at the time of the arrest of plaintiff, James A. Dombrowski. As a result of this hearing herein affiants were not invited to testify; also a resolution condemning the Southern Conference Educational Fund as a communist front and subversive organization and requesting the District Attorney for Orleans Parish to prosecute its officers.

Affiant Bruce C. Waltzer is not and never has been a member of the Southern Conference Educational Fund, which is not a membership organization. Neither of the affiants is a member of the Communist Party or any other organization listed by the Attorney General.

Affiants are both members of the Democratic Party and are active legal participants in cases and lawsuits involving Civil Rights and Civil Liberties.

[fol. 64] The District Attorney for the Parish of Orleans, through his Executive Assistant, Frank Kline, informed affiants, following November 8, 1963, while at pretrial conference with the Honorable Robert Ainsworth, Judge, that the District Attorney's office had subpoenaed the copies of the records used by the Committee at its hearing of November 8th and that in turn the Orleans Parish Grand Jury had subpoenaed copies of the records from the District Attorney's office and that the Grand Jury was to meet on

November 20, 1963; and that at that time this evidence would be presented to the members of the Grand Jury; and that it was possible that the Grand Jury would indict. Kline further stated that there had been inquiry on the part of some jurors as to when the evidence would be presented to them; and that there had been a specific charge by the Honorable Malcom O'Hara, Judge of the Criminal District Court to the Grand Jury that they investigate the Southern Conference Educational Fund and its officers.

It is on the basis of this information that affiants sort temporary relief from this Court, fearing imminent prosecution, and the affiants reiterate that they are in danger of being prosecuted under the statute used in their arrest and search. Affiants further state that were they to be indicted, said indictment would cause irreparable and serious damage to their reputation, to their law practice, to their families and friends.

Affiants further state that certain legal files relating to the Southern Conference Educational Fund were removed from their offices and that affiants sort the return of these files by Civil Action in this Court; and that before the files could be returned to them by order of the Court, the files were removed from the State of Louisiana by State police at the order of James.O. Eastland, Senator, and Chairman of the Judicial Committee United States Senate. The suit to compel the return of affiants' files was filed on October 27, 1963 and allotted to the Honorable Robert Ainsworth, Judge, who ordered a hearing on Monday, October [fol. 65] 28, 1963 and requested affiant Smith to notify all parties in advance of any action he would take on affiants' application to temporarily restrain and prevent the removal of the records from the State of Louisiana. As soon as Senator Eastland received the telegram (a copy of which is attached to this affidavit and made part hereof) he ordered the State police by telephone to seize the documents held by State Police for the Senate Judicial Committee and transport them to the Chancery Clerk in Woodville, Mississippi. The State police had previously been appointed custodians of the records by one J. G. Sourwine, stating he was acting as counsel for the United States Senate Com-

mittee. Major Burbank of the State police had been appointed custody of the records by the said Sourwine by letter dated October ....., 1963, a copy of which is attached to this affidavit and made a part hereof.

The records seized from affiants and from Dombrowski by the searches described above, had previously been subpoenaed to be produced by Internal Securities Committee of the Judicial Committee of the Senate of the United States by subpoena dated October 5, 1963 requesting the production of the records in Washington on Tuesday October 29, 1963. A copy of this subpoena is attached to this affidavit and made a part hereof. The issuance of this subpoena was preceded by a telephone call from Sourwine to one James H. Pfister, Chairman of the Joint Louisiana Committee, informing him that the Senate Committee would issue a subpoena the next day. Affiants are convinced that their arrest and the search of their offices and homes was to intimidate them as attorneys acting in furtherance of Civil Rights cases and in their support of the Southern Conference Educational Fund. The Chairman of the Joint State Committee, Pfister, charged immediately after the arrest of affiants, that the Southern Conference Educational Fund had been engaging in racial agitation.

[fol. 66] Affiants are convinced that they were arrested because of their active participation in the Louisiana Civil Liberties Union's efforts to desegregate various aspects of life in the City of New Orleans and the State of Louisiana.

Benjamin E. Smith, Bruce C. Waltzer.

Sworn to and subscribed before me this 10 day of January, 1964.

Milton E. Brener, Notary Public.

[fol. 67]

ATTACHMENT TO OFFER OF PROOF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14019 B

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et als.

AFFIDAVIT

State of Louisiana
Parish of Orleans

Before Me, the undersigned authority, duly qualified and commissioner in and for the Parish and State first above written,

Personally Came and Appeared:

Dr. James A. Dombrowski who, after being first duly sworn, declared and said:

That he is a graduate of Union Theological Seminary in New York City and has served as an instructor at that institution;

That he has served as the executive director of Southern Conference Educational Fund, Inc. and Southern Conference for Human Welfare, its predecessor organization, since 1942. His sole interest in political action is the elimination of segregation and all forms of discrimination based on race in the South through education and other non-violent methods. That his aims and purposes are identical to the expressed aims and purposes of Southern Conference Educational Fund.

That he is, and for many years has been, actively engaged in directing the attempts of SCEF to accomplish its pur-
[fol. 68] pose and assisting in its functions directed toward that end, including the sponsoring of integrated conferences bringing together southerners of similar purpose to exchange information on how to end segregation and discrimination, the publishing of a monthly journal, The Southern Patriot, which reports activities and aspirations of people in organizations working for integration, the printing and distribution of brochures, papers and reports on the various aspects of segregated living with suggestions for action to eliminate it, stimulation of local and state groups designed to combat segregation by direct action or political action, or both, operating a news service which provides information on integrationist activities to approximately 200 publications throughout the nation, providing funds for test cases to establish rights of minority, and engaging in campaigns to inform people of their rights of free speech, assembly and petition under the 1st Amendment of the U. S. Constitution.

That affiant's employment as managing director of SCEF is on a full-time basis and is one to which affiant is devoted to the exclusion of all other political interest or activity.

That the chief weapon of the SCEF is the use of the press and speech as means of mass communication for dissemination of ideas including the printing and distribution of literature and TV and radio appeals. The effectiveness of SCEF requires the active participation of thousands of persons of good standing in their community throughout the country, particularly in the south, as well as the financial contributions of thousands of other persons who do not participate actively in the programs of the organization.

[fol. 69] That on October 4, 1963, officers of the New Orleans Police Department and Louisiana State Police Department forcibly entered the office of the Southern Conference Educational Fund, Inc. at 822 Perdido Street in the City of New Orleans. There were approximately 13 officers participating in the raid, including F. B. Alexander, Jr., the Staff Director of the Joint Legislative Committee

on Un-American Activities for the State of Louisiana. The raid began at about 3:00 P.M., at which time a large moving van was driven to the entrance of the SCEF office accompanied by squad cars. Approximately twenty trustees from the House of Detention of the City of New Orleans were utilized in ransacking the office and in removing from the office practically all books, records, literature, correspondence, files, lists and all other documents, articles and objects located in the office. A description of part of the propery seized is as follows:

1. A four-drawer iron file, letter-size, containing all of the corporation correspondence relating to finance, board of directors (about 100 individual file folder of board members); taxes—federal and state, including old tax returns; meetings of the board; certain corporate certificates registered in the name of the corporation; about $100 in postage stamps (estimated); etc.; about 30 checks, est. total $300.

2. A four-drawer iron file similar to the one listed above containing correspondence with individuals, staff members, organizations; material on special projects sponsored by the Fund.

3. A four-drawer wooden file, letter-size, containing a [fol. 70] file of clippings on integration, some corporation correspondence on current projects; personal papers of James A. Dombrowski including a folder with certain corporate certificates.

4. Several transfer files containing corporate records and correspondence. Number of files not certain, perhaps four to six.

5. Wooden library index file containing about 16 to 20 thousand 3 x 5 cards.

6. Library of about 1,500 to 2,000 (est.) books and pamphlets, primarily on integration but including many books from affiant's personal library on literature, philosophy, religion, sociology, etc.

7. Contents of affiant's desk, as well as the contents of two additional desks and everything on a large work table. From affiant's desk, his personal check book containing some checks drawn to his name, all of his personal bank statements and other personal property.

8. Financial records of the corporation including cash book, ledger, journal, auditors' reports, cancelled checks and bank statements.

9. A file of the Southern Patriot for 21 years.

10. Photographs illustrating the southern integration movement over a period of about 20 years, largely from the Southern Patriot file.

11. Pictures from affiant's office wall, including a photograph inscribed to him by Mrs. Eleanor Roosevelt, a letter from Franklin D. Roosevelt to Dr. Frank Graham, president of the Southern Conference for [fol. 71] Human Welfare; a letter to affiant from Albert Einstein; a photograph inscribed to him from Mrs. Mary McLeod Bethune; photograph inscribed of Aubrey W. Williams and friend; a framed award to the Southern Patriot by the school of Journalism of Lincoln University;

12. Three posters from affiant's office wall: one a full page ad from an Atlanta paper by the Committee on Appeal for Human Rights; a poster in color We Shall Overcome from the March on Washington for Jobs & Freedom; and a full page ad from the New York Times entitled Love, the Greatest Thing in the World.

13. Contents of a storeroom including records, several thousand sheets of blank stationery, letterheads, bond paper, etc., probably 5 to 10 thousand blank receipts, numbered and printed in duplicate and triplicate, also various forms; probably 5M to 10M pamphlets, brochures, etc.

14. Mailing list of The Southern Patriot, about 10,000 names.

That in addition, some of the officers proceeded to affiant's home at 715 Governor Nichols Street and proceeded to search the same and to seize many items including affiant's wife's personal check book, certain checks payable to her, books, address books, blank stationery, portfolio, and that the said officers then proceeded to search his personal automobile located nearby and removed therefrom a single volume to-wit: Henry David Thoreau's Journal, and a notebook containing some personal reflections on same.

That affiant was thereupon placed under arrest and booked with the violation of the Louisiana Statutes concerning subversive activity and communist control. No formal charges were ever brought but on October 25, 1963, [fol. 72] a preliminary hearing was held in Section E of the Criminal District Court for the Parish of Orleans in No. 181-975 of that Court, and that after hearing evidence, the Court discharged affiant from the arrest status on grounds that the arrest warrant was improvidently issued and that there is no reasonable cause for the arrest.

That immediately subsequent to this hearing there have been many public statements made by Representative James H. Pfister and by Jack Rogers, Counsel for the Joint Legislative Committee, concerning the intentions of the committee to hold legislative hearings in Baton Rouge and to seek criminal charges against affiant and others for alleged violation of the above mentioned statutes.

That on November 15, 1963, it was reported in the public press and via radio and television that the Criminal District Court had charged the Orleans Parish Grand Jury with responsibility for investigating violations of the above mentioned statutes. That on the Court's instructions the Orleans Parish Grand Jury had subpoenaed copies of the confiscated records of the Southern Conference Educational Fund. That it was the stated intention of counsel for the Joint Legislative Committee to appear before the Orleans Parish Grand Jury on Thursday, November 21, 1963, to present alleged evidence against affiant and others for the purpose of securing indictment against them. That on about November 8 the Joint Legislative Committee on Un-American Activities met in Baton Rouge and adopted a

resolution, widely reported in the public press, branding SCEF as a communist front organization, and calling upon the Orleans Parish District Attorney to take prosecutive action against affiant and others.

[fol. 73] That affiant is guilty of no crime or any violation of Louisiana Law, including the above mentioned statutes. That the various documents, pamphlets, literature etc. seized on October 4th are not contraband, but that despite this fact they have never been returned to SCEF or to affiant. The mere lodging of a criminal charge or indictment against affiant or other officers of SCEF, however, could as effectively thwart the purposes of SCEF, as could a criminal trial and conviction.

That affiant knows from his experience of many years as managing director of SCEF that there is a general reluctance on the part of a very large portion of the contributors and active participants of both white and negro races to be identified with the civil rights movement because of the fear of being called communists or subversive, or fear of being linked with a group so labeled regardless of the merit or lack of merit of such allegation. The fear of such charges or allegations, regardless of their lack of basis in fact, effectively deters many who would otherwise be disposed to participate. That a large portion of the contributors to SCEF, particularly in the South, do not want and do not intend that their names should be used or utilized in any manner. They expect the fact of their contribution or association with the organization to remain confidential due to the unpopularity of the cause espoused by SCEF in their communities. They fear general ill will and possible economic reprisals. The fear of publicity attending the fact of their contribution or association deters many who would otherwise be disposed to contribute or associate themselves with SCEF and other civil rights organizations. The action of the Joint Legislative Committee on October 4, 1963, including the raids, arrests, searches and seizures is well calculated to destroy the ef-

[fol. 74] fectiveness of Southern Conference Educational Fund. It requires tremendous expense to attempt to reconstruct the lists, books, records and ledgers that have been

confiscated and not returned. It greatly deters contributors and participants; some contributors because of the fear of publicity attending the fact of their contribution, and other contributors and participants because of the association with an organization labeled or accused of subversion. Fund raising activities as well as other activities of SCEF above mentioned have been hurt to some extent by the police action taken on October 4, 1963, although the exact extent of the harm cannot be determined for some time.

That criminal charges or indictments against affiant or others would render a tremendously damaging blow to SCEF and to affiant insofar as the effectiveness of their endeavor is concerned. Criminal charges and indictments will greatly deter contributors and active participants and would seriously lessen the effectiveness and the extent of the operation of SCEF in its avowed purpose of elimination of segregation.

That criminal charges or indictments could themselves effectively hamper and stymie the function of SCEF and the activities of affiant in connection therewith irregardless of eventual trial and acquittal, and that the lodging of such charges and indictments could as effectively stymie and hamper the work of the organization and of affiant as could conviction.

James A. Dombrowski.

Sworn to and subscribed before me this 10 day of Jan., 1964.

Milton E. Brener, Notary Public.

[fol. 75]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

Wisdom, John Minor, Judge, West, E. Gordon, Judge, Ellis, Frank B., Judge.

NEW ORLEANS DIVISION

Division (Three Judge Court)
No. 14019

Civil Action

[Title omitted]

MINUTE ENTRY—January 10, 1964

This cause came on this day for hearing on question of admissibility of evidence after the Court has found a state statute constitutional.

Present:

John A. Jackson, Jr., Esq., Attorney for State of Louisiana;

Rudolph Becker, III, Esq., Attorney for District Attorney, Parish of Orleans;

Milton E. Brener, Esq., Arthur Kinoy, Esq., Attorneys for Plaintiffs;

Steve A. Alford, Esq., Attorneys for Burbank and Willie;

Robert J. Zibilich, Esq., Attorney for Benjamin E. Smith and Bruce C. Waltzer;

Jack N. Rogers, Esq., Attorney for Pfister.

Argument.

Rebuttal.

The majority of the Court, Judge E. Gordon West and Judge Frank H. Ellis, announce that they have decided that the Statute is Constitutional on its face, and that the com-

plaint fails to state a claim, upon which relief can be granted, accordingly;

It Is Now Ordered that Temporary Restraining Order previously issued be, and the same is hereby Vacated and Set Aside, and the State is relieved from effect of prior order issued directing it to produce the evidence.

Judge Wisdom dissents, and reasons will be assigned later.

[fol. 76] Counsel for Plaintiffs orally moves for a stay, pending appeal.

It Is Ordered that motion of plaintiffs for a stay pending appeal be, and the same is hereby, Denied, the Court having considered the stay, and the majority of the Court, Judge E. Gordon West and Judge Frank B. Ellis having declined to issue a stay order.

Judge Wisdom dissents.
A. P. Tureaud, Esq.

[fol. 77] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

CA 14019

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, INDIVIDUALLY, etc., et. al.

Ellis, Frank B.—Judge and West—Judge.

OPINION—February 4, 1964

This is a suit by James A. Dombrowski, Executive Director of Plaintiff Southern Conference Educational Fund, Inc. (hereinafter referred to as the SCEF) and the SCEF seeking to have declared unconstitutional Louisiana Re-

vised Statutes Title 14, Sections 358 through 388, referred to as the Subversive Activities and Communist Control Law, and Louisiana Revised Statutes, Title 14, Sections 390 through 390.5, referred to as the Communist Propaganda Control Law.

The alleged purpose of the SCEF is to (1) promote the general welfare, and (2) to improve the economic, social and cultural standards of the Southern people in accordance with the highest American democratic institutions and ideals.

Defendants are James H. Pfister, a Louisiana State Representative and Chairman of the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature; Russel R. Willie, a Major in the Louisiana State Police; Jimmie H. Davis, Governor of the State of Louisiana; Jack P. F. Gremillion, Attorney General of the State of Louisiana; Thomas D. Burbank, Commanding Officer of the Division of Louisiana State Police; and Jim Garrison, District Attorney for the Parish of Orleans, State of Louisiana. All parties defendant are sued individually and in their official capacities.

Jurisdiction of the Court over the complaint is sought under Title 28, United States Code, Sections 1331 (a), 1343(3) and (4), 2201 and 2202; Title 42, United States [fol. 78] Code, Sections 1981, 1983, and 1985.

Plaintiffs basically set forth their cause of action in ten paragraphs set forth in Appendix A.

After suit was filed a petition of intervention and complaint was filed by Benjamin E. Smith and Bruce C. Waltzer (hereafter referred to as Intervenors). Mr. Smith is Treasurer of the SCEF and Mr. Waltzer is a "friend and supporter" of the SCEF. The petition of intervention and complaint is fully set forth in Appendix B.

Plaintiffs seek that a permanent injunction issue " . . . restraining the defendants, their agents and attorneys from the enforcement, operation or execution of [the statutes in question] and, restraining the defendants, their agents, and attorneys from impeding, intimidating, hindering and preventing the plaintiffs or members, friends and supporters of plaintiff corporation from exercising the

rights, privileges, and immunities guaranteed to them by the Constitution and laws of the United States . . . " The complaint terminates with a demand that a declaratory judgment issue declaring the statutes in question void on their face, and null and void as violative of the constitution of the United States. Plaintiffs requested that a three-judge Court be convened to hear and determine the proceeding.

Intervenors ask for similar relief and also request that Foreman of the Orleans Parish Grand Jury, the individual members thereof and the Honorable Malcolm V. O'Hara, Judge, be made parties defendant. In addendum to the complaint the intervenors ask that a permanent injunction issue restraining the Orleans Parish Grand Jury and the Judge in Charge thereof, the Honorable Malcolm V. O'Hara, from enforcing the statutes in question.

Pursuant to plaintiff's request, a three-judge court was convened by the Honorable The Chief Judge for the Fifth Circuit to hear and determine the controversy.

In open court, and prior to a hearing, the court ordered [fol. 79] that the motion for leave of court to intervene be granted, there being no objection by defendants. However, the intervention, insofar as it names the Foreman of the Orleans Parish Grand Jury, the individual members thereof and the judge presently in charge of the Grand Jury, the Honorable Malcolm V. O'Hara, as parties defendant, is Denied.

The first phase of this case was argued on December 9, 1963, and was limited to the constitutionality of the statutes on their face, which was decided in the affirmative by a divided court; and a second hearing was held on January 10, 1964 for the sole purpose of determining after the statute had been constitutionalized whether or not these plaintiffs should be granted a "full blown" trial on the merits, in an attempt to show an unconstitutional application.

In considering this application the judges in the majority have assumed to be true all of the averments made in the petition.

Generally it may be soundly said that if the statutes in question are constitutional then the State Grand Jury, its Foreman, the Judge in charge and other state law enforcement officials may validly proceed with the enforcement and operation of same; and if the statutes are unconstitutional, the proper state or federal court, upon proper application by parties affected, would be the competent forum to enjoin the enforcement and operation of the statute by all officials.

The pleadings reveal that the plaintiffs and intervenors have been engaged, among other things, in urging the southern negro to exercise his constitutional rights to vote, to attend the school of his choice, and to have and enjoy all rights which are foreclosed to him by segregation barriers. The Court would like to first point out that these endeavors, if properly sought, are praiseworthly indeed for we will never enjoy a first class democracy as long as there walks second class citizens among the nearly two hundred mil-[fol. 80] lion Americans.

However, this should never operate as to bar the state from proceeding in an orderly manner to enforce its own protective statutes, particularly where the federal government has not pre-empted the field. The State should, and does, have the right to determine in an orderly manner which organization or organizations are primarily or secondarily designed to overthrow, destroy, or to assist in the overthrow or destruction of the constitutional form of local government by violence, force or any other unlawful means.

Can we deny the State the basic right of self-preservation? The right to protect itself? If so, truly this would be a massive emasculation of the last vestige of the dignity of sovereignty. This brings us to the specific statutes in question and the injunction requested.

"Federal injunctions against state criminal statutes either in their entirety or with respect to their separate and distinct prohibitions, are not to be granted as a matter of course, even if such statutes are unconstitutional," *Watson* v. *Buck*, 313 U. S. 387, 400. Federal Courts traditionally have refused, except in rare instances to enjoin criminal prosecutions under state penal laws. This principle is im-

pressively reinforced when not merely the relations between coordinate courts, but between coordinate political authorities are in issue, *Stefanelli* v. *Minard*, 342 U. S. 117. This has been manifested in numerous decisions of the Supreme Court involving a State's enforcement of its criminal law, e.g. *Douglas* v. *City of Jeanette*, 319 U. S. 157; *Watson* v. *Buck, supra; Beal* v. *Missouri Pacific Railroad Company*, 312 U. S. 45; *Cleary* v. *Bolger*, 371 U. S. 392.

Also see *England* v. *Louisiana Medical Board*, No. ——, October Term, 1963 —— U. S. ——, wherein Mr. Justice Douglas in a special concurring opinion, uses the following language setting forth the circumstances under which the federal injunctive power has been denied:

> [fol. 81] "A federal court will normally not entertain a suit to enjoin criminal prosecutions in state tribunals, with review of such convictions by this court being restricted to constitutional issues. *Beal* v. *Missouri Pac. R. Co.*, 312 U. S. 45. A federal court declines to entertain an action for declaratory relief against state taxes because of the federal policy against interfering with them by injunction. *Great Lakes Co.* v. *Huffman*, 319 U. S. 293. Where state administrative action is challenged, a federal court will normally not intervene where there is an adequate state court review which is protective of any federal constitutional claim. *Burford* v. *Sun Oil Co.*, 319 U. S. 315; *Alabama Comm'n* v. *Southern R. Co.*, 341 U. S. 341. The examples could be multiplied where the federal court adopts a hands-off policy and remits the litigants to a state tribunal."

These basic principles have been qualified under exceptional circumstances to allow interference when there is a clear showing that an injunction is necessary in order to afford adequate protection of constitutional rights, *Speilman Motor Company* v. *Dodge*, 295 U. S. 89; *Terrace* v. *Thompson*, 263 U. S. 197; *Packard* v. *Banton*, 264 U. S. 445; *Tyson* v. *Banton*, 273 U. S. 418; *Cline* v. *Frank Dairy Company*, 274 U. S. 445; *City of Houston* v. *J. K. Dobbs Company of Dallas*, 5 Cir. 232 F. 2d 428; *Morrison* v. *Davis*,

5 Cir. 252 F. 2d 102; *United States* v. *Wood*, 5 Cir. 295 F. 2d 172.

Assuredly the Supreme Court did not intend to countenance the application of this exception to the use of injunctive process by the federal system in such a way as to deprive the state and local courts of this nation in the exercise of their sovereign rights of self-protection. This Court should jealously guard these plaintiffs in their constitutional rights to equal protection of the laws, yet in our zeal to protect we should not consciously or unconsciously undermine the whole fabric of state and federal relationship as it struggles to survive its inherent constitutional posture.

The instant case postulates the basic constitutional issue whether threatened prosecution in the state courts imbued as it is with an aura of sedition or treason or acts designed to substitute a different form of local government by other [fol. 82] than lawful means, may properly be blocked and effectively thwarted by Federal action.[1]

The general rule of *Watson* v. *Buck*, supra, is to be applied where the paramount right of a state to self-preservation is at issue.

Mr. Justice Frankfurter, for the majority of the court, cautioned us in *Steffanelli* v. *Minard*, supra, at Page 123-124, that

> "[W]e would expose every State criminal prosecution to insupportable disruption. Every question of procedural due process of law—with its far-flung and un-

[1] None of the cases cited involved so fundamental an element of state sovereignty as that of self-preservation, e.g. *Speilman* contested the New York Code of Fair Competition for the Motor Vehicle Retailing Trade; *Terrace* contested a Washington law forbidding aliens from owning land; *Packard* contested a New York law requiring motor carriers to post a bond; *Tyson* contested a New York law forbidding resale of tickets to the theatre, etc., as a price in excess of fifty cents of its printed value; *Cline* tested the Colorado Anti-Trust Act; *City of Houston* involved an ordinance forbidding the sale of food to airlines by other than franchised concessionaires; *Morrison* involved the desegregation of the New Orleans public transit system; and *Wood* involved voter intimidation.

defined range—would invite a flanking movement against the system of State Courts by resort to the federal forum, with review if need be to [the Supreme] Court to determine the issue."

The Court will not presuppose incompetency or inability of the State Court judges to enforce federally protected constitutional rights. If the evidence has been illegally seized, it may be so declared in those courts; if the statutes in question are unconstitutional, they may be so declared by those Courts, Courts of Appeal, State Supreme Court, and an unsatisfied litigant still has ample opportunity for ultimate review by the United States Supreme Court of the federal questions involved, *Fenner* v. *Boykins*, 271 U. S. 240. A three-judge federal court should not be used as a vehicle to enjoin future enforcement of state statutes, constitutional or otherwise, *Watson* v. *Buck*, supra.

Nor is the instant case similar to *Aelony* v. *Pace* and *Harris* v. *Pace*, Civil Actions No. 530 and 531 respectively, Middle District of Georgia, decided Nov. 1, 1963, —— F. Supp. ——, for those cases involved the enjoining of a threatened prosecution under the Georgia "Insurrection Statute" which has been held unconstitutional in its appli- [fol. 83] cation in *Herndon* v. *Lowry*, 301 U. S. 242, and the "Unlawful Assembly Statute" which had just recently been held unconstitutionally vague in *Wright* v. *Georgia*, 373 U. S. 284.[2] The *Aelony* and *Harris* cases involved the purely unconstitutional situation of a defendant being held without bail for a misdemeanor.[3]

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[2] It is significant to note that the *Herndon* and *Wright* cases both found their way to the United States Supreme Court via the state courts, and not by the flanking-movement to a three-judge federal district court.

[3] The dissenting opinion, per Judge Elliott, correctly points out that the equity powers of a federal court should not be invoked to interfere by injunction with threatened criminal prosecutions in a state court. He further states that " . . . . I would require the assessment of reasonable bail in those instances where no bail has been assessed. I would impinge no further upon the prerogatives of the state courts . . . " After stating that the constitu-

It was said by Mr. Justice Holmes in The Sacco-Vanzetti Case, Transcript of the Record 5516, that "[t]he relation of the United States and the Courts of the United States is a very delicate matter that has occupied the thoughts of statesmen and judges for a hundred years and cannot be disposed of by a summary statement that justice requires me to cut red tape and to intervene."

This brings us first to the narrow question of supersession, that is, or whether the State of Louisiana can investigate, indict and prosecute for sedition, subversion, or communist activity directed against the state or local government.

First of all the statutes differ from the others found in Title 14 of the Louisiana Revised Statutes, better known as the Louisiana Criminal Code, in that the balance of the Code deals with the protection of the individual member of society, whereas, the statutes under consideration deal solely with the protection of the constitutional form of local government chosen collectively by all of the members of society.

[fol. 84] Louisiana is not the only state in the Union with sedition or treason or subversive activities and communist control laws. [See Appendix C]

Pennsylvania v. *Nelson*, 350 U. S. 497, involved the first such statute to be subjected to constitutional interpretation. Defendant-Respondent Steve Nelson, an acknowledged communist, was convicted under Section 207 of the Pennsylvania Penal Code, commonly referred to as the Pennsylvania Sedition Act which proscribed sedition against the State of Pennsylvania *and* the United States. He was sentenced to imprisonment for twenty years and was ordered to pay a fine of $10,000.00 and to pay the costs of prosecution in the sum of $13,000.00. The Superior

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tionality of the same statutes were then pending before the Supreme Court of Georgia, he continues. ". . . For us at this time to deal with the same questions about to be considered by the Supreme Court of the state strikes me as being an unwarranted interference with an embarrassment to the state court proceedings and a breach of those principles of comity historically governing the relations between the courts of the states and the courts of the United States."

Court affirmed and the Supreme Court of Pennsylvania reversed on the narrow issue of supersession of the state law by the Federal Smith Act, 18 U. S. C. A. 2385.

The United States Supreme Court affirmed, "[s]ince we find that Congress has occupied the field to the exclusion of parallel state legislation, that the dominant interest of the federal government precludes state intervention, and that administration of state acts would conflict with the operation of the federal plan, we are convinced that the decision of the Supreme Court of Pennsylvania is unassailable." *Pennsylvania* v. *Nelson*, supra, at Page 509.

Thus it appeared that the federal government had completely pre-empted the field of sedition against the State and Federal Governments.[2] The question then arose as to whether the "exclusion of parallel state legislation precluded the state from protecting itself from sedition.[3] [fol. 85] The question was laid to rest in *Uphaus* v. *Wyman*, 326 U. S. 72:

> "In Nelson itself we said that the 'precise holding of the court . . . is that the Smith Act . . . which prohibits the knowing advocacy of the overthrow of the government of the United States by force and violence, supersedes the enforceability of the Pennsylvania Sedition Act which proscribed the *same conduct*.' (350 U. S. at 499) The basis of Nelson thus rejects the notion that it stripped the States of the right to protect themselves. All the opinion proscribed was a race between federal and state prosecutors to the courthouse door. The opinion made clear that a state could proceed with *prosecutions* for sedition against the State itself; that it can legitimately investigate in this area follows a fortiori." (360 U. S. at 76) (Italics supplied)

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[2] The *Nelson* subsequently received critical comments of the prevailing view in various law journals, 6 Am. U. L. Rev. 53; 6 De Paul L. Rev. 155; 30 So. Cal. L. Rev. 101; 10 Vanderbilt L. Rev. 144; 31 Washington L. Rev. 300.

[3] Subsequently and upon the strength of *Nelson*, the Louisiana Supreme Court declared an entire package of State Legislation on Communist Control as unconstitutional, see *State* v. *Jenkins*, 107 So. 2d 648.

"Nor did our opinion in Nelson hold that the Smith Act has proscribed State activity in protection of itself either from actual or threatened 'sabotage or attempted violence of all kinds.'" (360 U. S. at 77)[4]

Thus it would appear that the state may validly proceed with prosecutions of sedition, treason, subversive activities and communist activities, carried on within the State and directed at the state alone.[5] It is unnecessary, therefore, and this court will not pass on the constitutionality of the Communist Propaganda Control Law and will also leave to the State Courts the questions of unfounded search warrants and warrants of arrest, improper use by the Joint Legislative Committee of the documents allegedly improperly seized, etc.

If the action taken by this Court on January 10, 1964, is construed as validating the Communist Control Act as to its constitutionality this action is, of the Court's own motion, hereby vacated, the Court here refraining from taking [fol. 86] any action in advance of appropriate proceedings in the State Courts at the State Level. All these matters we commit to the hands of the state criminal tribunals who are equally competent to conscientiously apply protected constitutional rights, subject, of course, to proper supervision by the State Appellate-level courts and the United States Supreme Court.

A very recent case dealing with the State's overriding and compelling interest and how it is affected by the Fourteenth Amendment is *Jordan* v. *Hutcheson,* 4 Cir. 323 F. 2d 597, wherein it was pointed out that:

"When the court does act under the Fourteenth Amendment it must weigh the state's interest in the product of this effort against the interest of the citizen in his constitutional rights. Only if the state's interest is

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[4] After the Uphaus decision the Louisiana Legislature enacted the statutes in question deleting the prohibitive language making it a crime to advocate the overthrow of the United States Government. Act 270 of 1962, RS 14:358-388.

[5] This is also the prevailing view expressed in a number of legal periodicals, e.g. 73 Harvard L. Rev. 163; 20 Louisiana L. Rev. 599; 28 Geo. Washington L. Rev. 461; 38 Texas L. Rev. 334.

overriding and compelling will the courts condone an invasion of those rights for which the plaintiffs here seek protection." (Footnote omitted)

The case at bar presents one of the most basic and compelling interests that the state could have, i.e. the basic interest of self-preservation and the right to enforce this interest in a lawful manner through its grand juries and district attorneys, the organic law of the state protecting it against subversion and treason where directed against the state alone.

Moreover, the *Jordan* case, supra, dealt with an injunction directed to a state legislative committee as distinguishable from the instant case which strikes at the very heart of the state's organic authorities dealing with law and order.

It has also been urged upon us that this very court has declared Louisiana Revised Statutes 14:385 as unconstitutional, *State* v. *NAACP,* 181 F. Supp. 37, probable jurisdiction noted, 364 U. S. 839; affirmed 366 U. S. 293. The Court would like to point out that that case involved the unconstitutional application of the statutes to the National Association for Advancement of Colored People, a valid, lawful, private activity. Whether or not these statutes may be constitutionally applied to an invalid, unlawful secret [fol. 87] activity remains an open question which we likewise commit into the hands of the state tribunals.[6]

During the first hearing of the matter it was indicated that the court would hear the arguments on the motion to quash and on the constitutionality of the act insofar as the face of it was concerned. It was determined that if the Court should hold the statute constitutional on its face that there would be another hearing for the reception of evidence. A second hearing was held on the question of whether a full trial would be permitted to show unconstitutional application.

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[6] See *People of the State of New York ex rel. Bryant* v. *Zimmerman,* 276 U. S. 63, wherein the Court held constitutional a similar statute curtailing the activities of the Ku Klux Klan stating that the First Amendment does not protect associations for unlawful purposes.

The Court is of the opinion that a hearing for the admission of evidence is not necessary where only questions of law are presented, and where plaintiff's allegations for the purpose of this motion are admitted to be true and would not either in law or in fact entitle him to injunctive relief, *Securities & Exchange Commission* v. *Groze*, 156 F. Supp. 544; *Schlosser* v. *Commonwealth Edison Company*, 7 Cir. 250 F. 2d 478, cert. den. 357 U. S. 906; Cf. *Sewell* v. *Pegelow*, 4 Cir. 291 F. 2d 196, and if a hearing reveals that [fol. 88] plaintiff has not stated a claim upon which relief can be granted, and cannot state such a claim, the court may dispose of the case finally by dismissing the complaint. *Mast Foos & Company* v. *Stover Mfg. Co.*, 177 U. S. 485, and that is what this court proposes to do.

Plaintiffs argued vociferously that the Court should hold a special hearing for the reception of evidence that these statutes, if constitutional, have been unconstitutionally applied as to them. This court will not gainsay the rule that evidence has been frequently admitted to show unconstitutional application of statutes. *NAACP* v. *Alabama*, 357 U. S. 449; *Gates* v. *Little Rock*, 361 U. S. 516; *Louisiana* v. *NAACP*, 366 U. S. 293; *Gibson* v. *Florida*, 372 U. S. 539; *NAACP* v. *Button*, 371 U. S. 415; but here the very vitals of our constitutional system of government are on the line.

The reception of evidence is a double-edged blade. It will cut to the quick both ways. If plaintiffs are permitted to introduce evidence of an unconstitutional application of the statutes, respondents would certainly be entitled to follow with evidence that the individual plaintiff is a Communist and that the corporate plaintiff is a Communist-front organization, and that the statute, as applied, was a constitutional application. In effect, these litigants, plaintiffs, defendants and intervenors, would indulge in a Star Chamber proceeding with all the "foldorol" and publicity attendant therewith.

For the good of all it is to be hoped that this case will reach the Supreme Court so that the matter of State-Federal relations in the judicial field may be clarified. If the federal district judges are to act as a police force to ride herd over state and municipal courts then we had best be so instructed and the matter for once and for all laid to

rest along with a vital part of the state judicial system already weakened by a constant federal encroachment in both the statutory and judicial fields.

[fol. 89] This country was nurtured to maturity by leaders who, in the nineteenth century, constantly alerted the people of this nation to the danger of giving preferential treatment to any one branch in our three-pronged governmental system over the other. Apprehension was expressed by Jefferson when he stated:

> "The great object of my fear is the Federal Judiciary. That body, like gravity, ever acting with noiseless foot, and in alarming advance, gaining ground step by step, and holding what it gains, is engulfing insiduously the [State] governments into the jaws of that which feeds them."
>
> Thomas Jefferson to Spencer Roane (1821)

We must stride forward at all times to purify our democracy but let it not be said that the judiciary functioning as both a court and a congress took away inherent rights from one group, religious, ethnic, etc., in our society in order to bestow it upon another. All should be treated alike.

The application for the injunction will be denied and the suit dismissed, each party to bear its own costs, for failure to state a claim upon which relief can be granted.

Frank B. Ellis, United States District Judge,

E. Gordon West, United States District Judge.

February 4, 1964

[fol. 90] APPENDIX A TO OPINION

THE CAUSE OF ACTION AS ALLEGED IN THE COMPLAINT

11. The defendants herein, under color of certain statutes of the State of Louisiana, have allegedly entered into a plan or conspiracy with other persons to the plaintiffs

unknown to subject or cause to be subjected the plaintiffs, citizens of the United States, to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

12. Pursuant to this plan or conspiracy the defendants have attempted to and threaten to continue to attempt to prosecute the individual plaintiffs under the color and authority of certain state statutes, namely Louisiana Revised Statutes 14:358 et seq. and 14:390 et seq.

13. Defendants Pfister and Willie, so say the plaintiffs, without proper legal authority, attempted to institute the prosecution of the individual plaintiffs by obtaining on October 2, 1963, certain warrants of arrest as well as search warrants based upon sworn affidavits alloging that the plaintiffs had conspired to violate the aforementioned statutes. These arrest and search warrants were served and acted upon by police officers under the control of the defendants herein. Despite the fact that the warrants of arrest were summarily vacated by a state Criminal District Court for the Parish of Orleans which gave the plaintiffs, without delay, the full relief sought upon a holding that there was no probable cause for the issuance of the warrants based upon sworn affidavits alleging that the continues to threaten to attempt to obtain new prosecutions of the plaintiffs and to hold legislative hearings under the same statutes.

14. It is averred that on Friday, November 8, 1963, the Joint Legislative Committee on Un-American Activities of [fol. 91] the Louisiana Legislature held an "open hearing" in Baton Rouge, Louisiana, at which hearing defendant Pfister, as well as counsel for the said committee, Rogers, utilized photostats of certain documents seized on October 4, 1963, under the alleged authority of the aforesaid search warrants. The Committee thereupon adopted a resolution naming plaintiff corporation as a "communist front" and further calling upon defendant Garrison to prosecute officials of this corporation including plaintiff Dombrowski, under the provisions of the statutes herein cited. Pfister and Rogers have further publicly announced their intention

of delivering to Garrison copies of documents illegally seized from the plaintiffs for the purpose of presenting the said copies to the Orleans Parish Grand Jury and for institution of criminal proceedings under the same statutes.

15. It is alleged that Louisiana Revised Statutes 14:358 through 14:388 and Louisiana Revised Statutes 14:390 through 14:390.5 are void and illegal on their face as applied to the plaintiffs herein, in that they violate the Constitution of the United States and in particular the First, Fourth, Fifth, Eighth and Fourteenth Amendments thereto. These state statutes violate the fundamental guarantees of free speech, press, assembly and the right to petition the government for a redress of grievances. They violate the guarantee of due process of law in that they are vague and indefinite and fail to meet the requirement of certainty in criminal statutes. They violate the prohibitions against ex post facto legislation and bills of attainder and represent an unconstitutional delegation of legislative power, all in violation of the Constitution of the United States.

16. The aforesaid state statutes are likewise void and illegal and of no force or effect in that they invade areas preempted to the exclusive jurisdiction of the United States by statutes and laws enacted by the Congress of the United States.

[fol. 92] 17. Pursuant to the aforesaid conspiracy and plan the defendants have threatened and continue to threaten to enforce the said unconstitutional void and illegal state statutes against the plaintiffs herein for the sole purpose of subjecting and causing to be subjected the plaintiffs and the members, friends and supporters of the plaintiff corporation to the deprivation of rights, privileges and immunities secured to them by the Constitution and laws of the United States.

18. The plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting through peaceful and non-violent means to achieve the elimination of all forms of racial segregation in the states of the South and the State of Louisiana and to assist and encourage Negro citizens to exercise their rights to register

and vote in federal and state elections. These objectives are specifically protected and guaranteed by the Constitution of the United States and the Thirteenth, Fourteenth and Fifteenth Amendments thereto. In their constant efforts to achieve these constitutionally protected efforts, the plaintiffs and the members, friends and supporters of the plaintiff corporation have been attempting to exercise rights guaranteed under the First and Fourteenth Amendments to freedom of speech, press, assembly and association and the right to assemble, associate and petition for a redress of grievances.

19. Unless this Court restrain the operation and enforcement of these void, invalid and unconstitutional state statutes, the plaintiffs, and the members, friends and supporters of the plaintiff corporation will suffer immediate and irreparable injury.

The sole purpose, intention and effect of threatening to enforce said statute is to deter, intimidate, hinder and prevent the plaintiffs and the members, friends and supporters of plaintiff corporation from exercising their fundamental [fol. 93] constitutional rights guaranteed under the First and Fourteenth Amendments in their efforts to enforce the equality under the law guaranteed by the Thirteenth, Fourteenth and Fifteenth Amendments.

It is prayed that unless this court restrains the operation and enforcement of these void, invalid and unconstitutional state statutes, the plaintiffs and the members, friends and supporters of the plaintiff corporation will continue to suffer the most serious, immediate and irreparable injury in that they will continue to be deterred, intimidated, hindered and prevented from exercising elementary and fundamental Federal constitutional rights.

It should be noted that the only time these plaintiffs sought relief in a state tribunal the relief was forthwith granted by the state criminal district court.

[fol. 94] Clerk's Note:

Appendix B to Opinion—Petition of Intervention and Complaint is omitted from the record here as it appears on page 18, supra.

[fol. 97]

Civil Action 14,019

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, et al.

APPENDIX C TO OPINION

ALABAMA

Code of Alabama, Title 14, Sections 22(1) and 22(2), Sections 97(1) through 97(8).

ALASKA

Sedition Act, Alaska Statutes 1962, §11.50.010, et seq.

ARIZONA

Arizona Revised Statutes, Title 16, Sections 205 & 206.

ARKANSAS

Arkansas Statutes, Title 14, Sections 4125 through 4131.

CALIFORNIA

California Codes, Title 5, Chapter 1, Sections 350,000 through 350,007.

COLORADO

Colorado Revised Statutes, Chapter 40, Article 23, Section 7.

CONNECTICUT

Conn. Gen. Stat. Ann. Title 53, Sections 1 through 8.

DELAWARE

Delaware Code Annotated, Title 11, Chapter 3, Subchapter LII, Sections 861 through 863.

FLORIDA

Florida Statutes Annotated, Title 44, Chapter 876, Sections 1 through 4.

GEORGIA

Georgia Code Annotated, Title 26, Chapter 9A, Sections 901a through 912a.

HAWAII

Revised Laws of Hawaii, Title 40, Chapter 361, Sections 1 through 12.

IDAHO

Idaho Constitution, Article 5, Section 5.

ILLINOIS

None.

INDIANA

Burns Indiana Statutes, Title 10, Chapter 52, Sections 5201 through 5209.

IOWA

Iowa Code Annotated, Chapter 689.

KANSAS

Corrick's General Statutes, Chapter 21, Article 3, Sections 301 through 308.

KENTUCKY

Kentucky Revised Statutes, Chapter 432, Section 10 et seq.

LOUISIANA

Louisiana Revised Statutes, Title 14, Sections 358 through 388 and 390 through 390.5.

MAINE

Revised Statutes of Maine, Chapter 143, Section 4.

[fol. 98]

MARYLAND

Michie's Annotated Code of Maryland, Article 85A, Sections 1 through 19.

MASSACHUSETTS

Massachusetts General Laws Annotated, Chapter 264, Sections 16 through 23.

MICHIGAN

Rice's Michigan Statutes Annotated, Title 28, Chapter 84, Sections 812 through 813(4).

MINNESOTA

Minnesota Constitution, Article 1, Section 9.

MISSISSIPPI

Mississippi Code Annotated, Sections 4194.01 through 4194.10.

MISSOURI

Missouri Revised Statutes, Chapter 562.

MONTANA

Smith's Revised Code of Montana, Chapter 44, Sections 4401 through 4410.

NEBRASKA

Revised Statutes of Nebraska, Title 28, Article 7(i), Sections 747 through 750.

NEVADA

Nevada Constitution, Article 1, Section 19.

NEW HAMPSHIRE

New Hampshire Revised Statutes Annotated, Chapter 588, Sections 1 through 16.

NEW JERSEY

New Jersey Statutes Annotated, Title 2A, Chapter 148, Articles 1 through 5.

NEW MEXICO

New Mexico Code, Title 4, Chapter 15, Section 1, et seq.

NEW YORK

McKinney's Consolidated Laws of New York, Penal Code, Section 2380.

NORTH CAROLINA

Michie's General Statutes of North Carolina, Chapter 14, Articles 3 through 3A.

NORTH DAKOTA

North Dakota Constitution, Article 19; North Dakota Code Annotated, Title 12, Chapter 7, Section 1 et seq.

OHIO

Baldwin's Ohio Revised Code & Service, Title 29, Chapter 2921, Sections 1 through 27.

OKLAHOMA

Oklahoma Statutes Annotated, Title 21, Chapter 52, Sections 1266.1 through 1266.11 and 1267.1 through 1267.2.

OREGON

Oregon Constitution, Article 1, Section 24.

PENNSYLVANIA

Purdon's Pennsylvania Statutes, Title 18, Section 3811.

RHODE ISLAND

General Laws of Rhode Island, Title 11, Chapter 43, Sections 11 through 14.

SOUTH CAROLINA

Code of Laws of South Carolina, Title 16, Chapter 9, Sections 581 through 589.

[fol. 99]
SOUTH DAKOTA

South Dakota Code, 13.0701.

TENNESSEE

Tennessee Code Annotated, Title 39, Chapter 44, Sections 4405, 4420 through 4423.

TEXAS

Vernon's Texas Civil Statutes, Title 126A, Article 6889.

UTAH

Utah Constitution, Article 1, Section 19.

VERMONT

Vermont Statutes Annotated, Title 13, Chapter 67, Section 3405.

VIRGINIA

Code of Virginia, Title 18, Chapter 8, Article 1, Sections 418 through 422.

WASHINGTON

Revised Code of Washington Annotated, Title 9, Chapter 81, Sections 10 through 130.

WEST VIRGINIA

West Virginia Code of 1961, Sections 5908 et seq.

WISCONSIN

West's Wisconsin Statutes Annotated, Section 946.03.

WYOMING

Michie's Wyoming Statutes, Title 9, Chapter 8, Sections 693 through 699.

[fol. 100]

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14,019

Division "B"

JAMES A. DOMBROWSKI, et al.,

v.

JAMES H. PFISTER, individually, etc., et al.

DISSENTING OPINION—Filed February 20, 1964

Wisdom dissenting:

I respectfully dissent.

The main issue in this case is not, as the majority opinion declares, "the State's basic right of self-preservation". No one questions this right.

The main issue is whether the State[7] is abusing its legislative power and criminal processes: whether the State, under the pretext of protecting itself against subversion, has harassed and humiliated the plaintiffs and is about to prosecute them solely because their activities in promoting civil rights for Negroes conflict with the State's steel-hard policy of segregation. They ask the federal court to defend their federally protected rights.

The Court declined to act on the constitutional issues the case presents and refused the plaintiffs an opportunity to offer evidence in proof of their case.[8] It is not clear why it did. To me, the majority's decision appears to rest on a sort of visceral feeling that somehow, if relief were granted, the Court would be impinging on States' Rights.

The concept of the States as political bodies rather than administrative units of the national government tends to fractionate power, preserve regional differences, encourage home rule, and promote democracy at all levels of Govern-
[fol. 101] ment. These characteristics of American federalism are essential to the kind of government I want to live under. I say, however, with the Madison of the Constitutional Convention:

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[7] The prime mover against the plaintiffs is the Joint Legislative Committee on Un-American Activities of the Louisiana Legislature. The plaintiffs sued James H. Pfister, Chairman of that Committee, individually and as Chairman. The other defendants are Jimmie H. Davis, Governor of the State; Jack F. F. Gremillion, State Attorney General; James Garrison, District Attorney for the Parish of Orleans; Thomas D. Burbank, Commanding Officer of the State Police; and Russell R. Willie, a Major in the State Police. For convenience, the majority opinion speaks of all or some of these individuals when it uses the term "State". I do the same.

Also for convenience, "plaintiffs" includes "intervenors" and the Louisiana Anti-subversion Law refers both to R.S. 14:358-388, The Subversive Activities and Communist Control Law, and R.S. 390-390.5, the Communist Propaganda Control Law.

[8] The plaintiffs have offered the affidavits of Dr. Martin Luther King, Rev. Fred L. Shuttlesworth, Rev. C. T. Vivian, Dr. Herman Long, and Bishop Edgar A. Love. Ben Smith, Bruce Waltzer, Dr. Dombrowski and others are prepared to testify.

> "Was, then, the American Revolution effected, was the American Confederacy formed, was the precious blood of thousands spilt, and the hard-earned substance of millions lavished, not that the people of America should enjoy peace, liberty, and safety, but that the government of the individual States . . . might enjoy a certain extent of power and be arrayed with certain dignities and attributes of power? . . . [*A*]*s far as the Sovereignty of the States cannot be reconciled with the happiness of the people, the voice of every good citizen must be, Let the former be sacrificed to the latter.*" (Emphasis added.)[9]

"States' Rights" are mystical, emotion-laden words. For me, as for most Southerners, the words evoke visions of the hearth and defense of the homeland and carry the sound of trumpets and the beat of drums. But the crowning glory of American federalism is not States' Rights. It is the protection the United States Constitution gives to the private citizen against *all* wrongful governmental invasion of fundamental rights and freedoms.

When the wrongful invasion comes from the State, and especially when the unlawful state action is locally popular or when there is local disapproval of the requirements of federal law, federal courts must expect to bear the primary responsibility for protecting the individual.[10] This

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[9] The Federalist, No. XLV.

[10] "[T]he principal, if not the only, reason for establishment of the lower courts was the need for dealing with local opposition to, or disregard of, the federal law. Unless they perform this function adequately, there is little reason to have them at all. . . . And it is quite clear that the reason Congress was given such power, and presumably the basic reason for the existence of the federal courts which Congress did establish forthwith was the need for national tribunals to enforce the national law in the teeth of local resistance." Lusky, Racial Discrimination and the Federal Law: A Problem in Nullification, 63 Col. 1163, 178 (1963). Similarly, Mr. Justice Douglas, who must be in a state of shock at the thought that this Court quoted his opinion in England v. Louisiana State Board of Medical Examiners, 32 L.E. 4093, 4096, in support of the result reached here, said in that opinion: "Today we put

responsibility is not new. It did not start with the *School Segregation Cases*. It is close to the heart of the American Federal Union. It is implicit in the replacement of the Articles of Confederation by the Constitution. It makes federalism workable.

The distinguishing feature of this case, which the majority chooses to ignore, is the contention that the State, under the guise of combatting subversion, is in fact using and abusing its laws to punish the plaintiffs for their advocacy of civil rights for Negroes. It so happens that the plain- [fol. 102] tiffs contend that the Louisiana Anti-Subversion Law is unconstitutional and, besides, has been superseded by congressional legislation. If those contentions are sound, unquestionably the plaintiffs have a right to relief in the federal court. But the deep thrust of the complaint is the State's abuse of its power as to the plaintiffs. If the evidence on this point should support the plaintiffs, they would be entitled to relief—even if the law were clearly constitutional.

It is true that some law-violators, caught dead to rights, say "You can't do that to me", and shout "Civil Rights" in an effort to escape just punishment. But it is also true,

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federal jurisdiction in jeopardy. As the Court says there are many advantages in a federally constructed record. Moreover, federal judges appointed for life are more likely to enforce the constitutional rights of unpopular minorities than elected state judges. . . . The Court recognizes the value to the litigants of being in the federal court. . . . The value of the independence of federal judges, and the value of an escape from local prejudices when fact findings are made are considerable ones." Justice Douglas quoted Madison with regard to the problem when the creation of lower federal courts was being mooted: "What was to be done after improper verdicts, in state tribunals, obtained under the biased directions of a dependent judge, or the local prejudices of an undirected jury? To remand the cause for a new trial would answer no purpose. To order a new trial at the supreme bar would oblige the parties to bring up their witnesses, though ever so distant from the seat of the court. An effective judiciary establishment, commensurate to the legislative authority, was essential. A government without a proper executive authority, was essential. A government without a proper executive and judiciary would be the mere trunk of a body, without arms or legs to act or move." 5 Elliott's Debates (Lipp. ed. 1941), p. 159.

and every judge in this circuit knows it, that in some cases, all too many cases, persons have been punished without any justifiable basis or punished cruelly beyond the bounds of just punishment for a minor offense, to serve as an object lesson to others, because they opposed the State's policy of segregation.[11] The plaintiffs assert that this is such a case. There is, therefore, no substance to the majority's argument that the federal court is here being asked to interfere with orderly state criminal processes, and that if the Court granted relief it would be a precedent for interfering *every* time a criminal defendant protested that his constitutional rights were invaded. The processes under attack in this case are, allegedly, not the State's usual, orderly, impersonal, legislative and criminal processes.

This is a civil action which was brought *before* any criminal proceeding was begun in the state courts. There is therefore no unseemly clash of courts and no question of Section 2283 of the Judicial Code barring relief.[12] Assuming the truth of the complaint, as the Court *had* to do in order to dismiss the suit, the case is a classic example for

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[11] On World-Wide Communion Sunday in October 1963 three young women, two of whom were Negroes, were arrested for attempting to attend religious services at a Methodist Church in Jackson, Mississippi. They got only as far as the church steps when they were told that they were not welcome. A policeman gave them two minutes to move on. As they started to walk away he told them that they had taken too long. He arrested them. They were indicted for violating Section 2090 (trespass) and Section 2406 (disturbing worship) of the Code of Mississippi. The Police Justice's Court of Jackson sentenced them to a year's imprisonment and fined each $1,000. They removed the case to the Federal District Court for the Southern District of Mississippi on the ground that their civil rights were violated. The district judge remanded the action back to the State Court. Poole v. City of Jackson, 5 Cir. 1964, No. 21058, pending on appeal on the right to appeal.

[12] Ex parte Young, 209 U. S. 123 (1908); Traux v. Raich, 239 U. S. 33 (1915); Looney v. Eastern Texas R.R., 247 U. S. 214 (1918); American Houses v. Schneider, 211 F.2d 881 (3rd Cir. 1954); Hart & Wechsler, The Federal Courts and the Federal System 847 (1953) Note, Enjoining State Court Proceedings, 74 Harv. L. Rev. 726, 729 (1961).

raising the shield of the Constitution in protection of a [fol. 103] citizen's constitutional rights. Congress recognized the problem in federal-state relations now before us and in the Civil Rights Act expressly authorized citizens to protect their constitutional rights by suing in the federal court.

If the Louisiana Anti-Subversion Law is invalid on its face or invalid as applied to the plaintiffs, they should not be subjected to the public indignity of prosecution, the paralysis of earning ability while their case is pending, and a long, expensive appeal through the state courts to the United States Supreme Court. These are foreseeable and inevitable consequences of unlawful State action of the kind alleged here. Win, lose, or draw in the court of last resort—the individual citizen is a heavy loser when the State abuses its legislative power and criminal processes. The only adequate remedy is for the federal district court to stop the State at the start of its abuse of its governmental power. Whether the State is misusing its power can be determined only after a fair and full hearing. The logical forum for that determination is a federal tribunal.

This Court has jurisdiction. And as a three-judge Court it was instituted for just such a case. It should face up to the responsibilities incident to jurisdiction and to doing the job it was designed to do. Much as I regret to say it, and, of course, I mean no personal reflection on my colleagues, whom I esteem highly, I consider that this Court's refusal to pass on the constitutional issues and to give the plaintiffs a day in court is an indefensible denial of due process.

I turn now to a more detailed analysis of what the case is all about and how the Court has failed to meet its obligations as a federal district court.

[fol. 104]

I.

Is the law unconstitutional on its face?

A. The plaintiffs make two major contentions with respect to the *per se* unconstitutionality of the Louisiana Anti-Subversion Law. First, they contend that the statute violates the freedoms of speech, assembly, and association

guaranteed by the First and Fourteenth Amendments. Second, they contend that the law is so vague and indefinite and completely without standards that it violates due process and constitutes an unlawful delegation of legislative power.

B. This Court held a long and formal hearing for the sole purpose of deciding the *per se* validity of the law. At the end of the hearing the majority declared the law constitutional on its face. The Court has now reversed itself and, on the assumption that the plaintiffs will be prosecuted, shifted to the state courts responsibility for deciding the federal questions. *The majority opinion does not discuss any of the substantial constitutional issues the complaint raises.*

C. I shall not deal at length with the constitutional arguments, because of the Court's decision to finesse the subject.

Basically, everyone recognizes that the general scope of the statute is within the State's constitutional authority. The difficulty comes from the unlimited commands the statute imposes which conflict with individual rights of free speech and association. See Gibson v. Florida Committee, 1963, 372 U. S. 539, —— S.Ct. ——, L.Ed. 2d ——. One example will suffice to show the overbreadth of the statutory language. Section 359(2) defines "communist party" so as to include "any organization which in any manner advocates or acts to further the success of the program of world domination of the international communist conspir- [fol. 105] acy." This Court knows from other litigation, particularly United States v. Louisiana, E.D. La., Civil Action No. 2548, that the Louisiana legislature regards the movement to increase Negro voting in the State as part of the Communist conspiracy.[13] *All* of the organizations pro-

[13] The "Key to Victory, A Manual of Procedure for Registrars of Voters, Police Jurors and Citizens" is a pamphlet prepared by State Senator William M. Rainach and William M. Shaw. Senator Rainach was the first Chairman of Louisiana Joint Legislative Committee to maintain segregation and Mr. Shaw was the first

moting increased Negro voting registration therefore fall within the definition of "communist party", and any member could be prosecuted under the Louisiana Anti-Subversion Law. The Supreme Court's words in *NAACP* v. *Button* are apt here:

> "It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes. We cannot close our eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community of Virginia; litigation assisted by the NAACP has been bitterly fought. In such circumstances, a statute broadly curtailing group activity leading to litigation may easily become a weapon of oppression, however evenhanded its terms appear. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens." NAACP v. Button, ——, 371 U. S. 415, 83 S. Ct. 328, —— L.Ed. ——.

In the same case the Supreme Court also said:

> "The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchallenged delegation of legislative powers, but upon the danger of tolerating in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application."

"When, as in this case, the claim is made that particular legislative inquiries and demands infringe substantially upon First and Fourteenth Amendment associational rights of individuals, the courts are called upon to, and must, de-

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counsel for the Committee. The pamphlet was used to instruct registrars. The pamphlet states and other evidence in the record indicates that "The Communists and the NAACP plan to register and vote every colored person of age in the South."

termine the permissibility of the challenged action." Gibson v. Florida Committee, ——, 372 U.S. 539. The constitutional attack affects many more sections of the law than those sections for violation of which the plaintiffs have been threatened with prosecution. The Court completely disregards this fact. The Court should have weighed the [fol. 106] statute in the light of federal standards and decided constitutionality one way or the other. I would hold that some of the provisions of the law are unconstitutional on their face.

II.

Is the law unconstitutional as applied?

A. The intervenors, two practicing lawyers in New Orleans, have been active in civil rights cases, representing Negroes in many desegregation cases and representing the American Civil Liberties Union in all sorts of cases. They were arrested. At gunpoint their homes and offices were raided and ransacked by police officers and trustees from the House of Detention acting under the direct supervision of the staff director and the counsel for the State Un-American Activities Committee. The home and office of the director of Southern Conference Educational Fund were also raided. Among the dangerous articles removed was Thoreau's Journal. A truckload of files, membership lists, subscription lists to SCEF's newspaper, correspondence, and records were removed from SCEF's office, destroying its capacity to function. At the time of the arrests, Mr. Pfister, Chairman of the Committee, announced to the press that the raids and arrests resulted from "racial agitation". An able, experienced, and independent-minded district judge of the Criminal District Court for the Parish of Orleans, after hearing evidence, discharged the plaintiffs from arrest on grounds that the arrest warrants were improvidently issued and that there was no reasonable cause for the arrests. Shortly thereafter, the Board of Governors of Louisiana State Bar Association adopted a resolution stating, in part:

"The bar has a responsibility for safeguarding the principles which guarantee due process, and it is a [fol. 107] deep concern where procedural or substantive aspects of search and seizure harass a member of the bar in the proper exercise of his duties.

"Search and seizure of a file in a lawyer's office, unless due process has been adhered to in the strictest sense, is abhorred since such procedure endangers the exercise of constitutional rights of every lawyer and particularly the rights of the client who has placed his trust in him.

"Specifically, this board would urge that police actions by any arm of government scrupulously conform to the best traditions of justice, which guarantee due process to every citizen." New Orleans Times-Picayune, January 3, 1964.

One of the intervenors is an officer of SCEF. The other lawyer is not even a member; he is threatened with prosecution for failing to register as a member of the National Lawyers' Guild.

The plaintiffs say that the purpose of the Southern Conference Educational Fund is to improve economic, social, and cultural standards in the South in accordance with the highest American institutions and ideals. Its principal activity is to promote civil rights for Negroes by education, correspondence, and publication of a newspaper. The plaintiffs deny any connection with communism or subversion.

As emphasized earlier, the plaintiffs contend that, even if the law is valid on its face, the State has searched their homes and offices, seized their property, arrested them, and is about to prosecute them not because they are Communists—they deny any connection with communism—but because their thinking is not compatible with the State's segregation policy. The plaintiffs offer proof in the form of affidavits and witnesses willing to testify.

B. Here again the Court reversed itself. At the first hearing the Court agreed unanimously to receive the evidence at a second hearing. This makes sense. There is no [fol. 108] way of deciding whether a law is applied uncon-

stitutionally without hearing evidence as to its application. Evidence was also admissible to show the purpose, operation, and effect of the law. Now, however, the majority has refused to allow the plaintiffs to prove their case by affidavit or by witnesses.

The technical basis for the majority decision was its sustaining of the defendants' motion to dismiss on the ground that "the complaint failed to state a claim upon which relief can be granted". This motion, of course, requires the Court to accept as true all of the allegations in the complaint. In effect the Court held that a citizen has no cause or right of action against the State, to defend federally guaranteed rights and freedoms, when *admittedly* the State is using its Anti-Subversion Law against him, not because he is subversive, but because he advocates civil rights for Negroes. The Court never got around to stating just why the complaint is defective. The fact that the suit is against the State and its officers might affect judicial discretion to withhold the relief prayed for, but it does not affect the plaintiffs' right or cause of action.

Apparently uneasy because of its change of heart and desperately searching for an argument, any argument, the Court came up with a quiddity in keeping with its ratiocinations:

> "This court will not gainsay the rule that evidence has been frequently admitted to show unconstitutional application of statutes; . . . but here the very vitals of our constitutional system of government are on the line. . . . If plaintiffs are permitted to introduce evidence . . . respondents would certainly be entitled to follow with evidence. . . . In effect, these litigants, plaintiffs, defendants and intervenors, would indulge in a Star Chamber proceeding with all the 'foldorol' and publicity attendant therewith."

C. Disregarding the Star Chamber's "foldorol" and publicity, I understand the Court concedes that in some cases evidence has been admitted to show an unconstitutional ap- [fol. 109] plication of a valid law, but holds that in this case evidence should not be admitted because: (1) the

"vitals" of our Constitution are on the line; (2) the plaintiffs should not be allowed to introduce evidence, for that would entitle the defendants to introduce evidence; (3) a hearing should not be public, or at any rate, a hearing should not be held if there is a likelihood of considerable publicity. This rationale illustrates what I mean by the suggestion, respectfully tendered, that perhaps the decision is the result of a visceral reaction.

In an analogous case, a different panel of this Court held that a section of this very law now before us was unconstitutional as it was applied to the National Association for Advancement of Colored People. State v. NAACP, E.D.La., 1960, 181 F. Supp. 37, *aff'd* 366 U. S. 293. "[T]he constitutionality of a statute, valid on its face, may be assailed by proof of facts tending to show that the statute as applied to a particular article [or person] is without reason. . . . United States v. Caroline Products Co., 1938, 304 U. S. 144, 58 S. Ct. 778, 82 L. Ed. 1234." As Mr. Justice Holmes has said, "[T]he determination as to [the plaintiffs'] rights turns almost wholly upon the facts to be found. . . . All their constitutional rights, we repeat, depend upon what the facts are found to be. . . . They are not to be forbidden to try those facts before a court of their own choosing, if otherwise competent." Prentis v. Atlantic Coast Line Co., 1908, 211 U. S. 210, 29 S. Ct. 67, 53 L. Ed. 150.

All I know about the plaintiffs is what I have read about them in the pleadings and in their written offer of proof. Perhaps the plaintiffs are Communists or subversive; perhaps not. Perhaps the State is being falsely accused; perhaps not. I know this, however: the plaintiffs have a right [fol. 110] to sue in the federal district court and fair play entitles them to a day in court to make their proof.

III.

Has the Louisiana Anti-Subversion Law been superseded by congressional laws on the subject?

A. The plaintiffs say that, judging by the criteria established in Pennsylvania v. Nelson, 1956, 350 U. S. 497, 76

S. Ct. 477, 100 L. Ed. 640, Congress has superseded the Louisiana law through enactment of the Smith Act of 1940, as amended in 1948, 18 U.S.C. 2385, the Internal Security Act of 1950, 50 U.S.C. 761 et seq., and the Communist Control Act of 1954, 50 U.S.C. 841. *Nelson* established three tests to show congressional intention to supersede state laws on subversion. Applying these tests to this case, the plaintiffs contend, first, that Congress has evidenced this intention by a pervasive, all-embracing program of regulation; second, that the Louisiana law is on a subject in which the national interest is so dominant that the federal system must be assumed to preclude enforcement of state laws on the same subject; third, that enforcement of the state law presents a serious conflict with the federal program.

B. The majority opinion discusses this contention at length although, to have been consistent with its refusal to decide constitutionality, the Court should have refused to discuss supersession. There is no less, and no more, reason to decide one than the other. The Court never comes to grips with the tests *Nelson* establishes. Instead, the Court simply relies on Uphaus v. Wyman, 1959, 360 U. S. 72, 79 S. Ct. 1040, 3 L.Ed.2d 1090, in which the Supreme Court stated that *Nelson* does not prohibit prosecution for sedition against the State itself or prevent the State from pro-
[fol. 111] tecting itself from sabotage or attempted violence.

C. *Uphaus,* if I may say so, is of small help in our national efforts against Communism but it offers great prospects for disguising unlawful state action against federally protected rights. Nevertheless, the decision may be read as a logical and proper limitation on *Nelson* when the individuals prosecuted have in fact directed their activities against the State (not against the Nation), as in such incidents as riots, malicious mischief, criminal anarchism, or a conspiracy to dynamite the State house. Thus, there is no question as to the validity of the State Criminal Anarchy Law, La. R.S. 14:115. And the Louisiana Supreme Court very properly held that *Nelson* did not foreclose a prosecution under that statute "which does not necessarily involve seditious acts against the federal government". State

v. Cade, 1963, 244 La. 534, 135 So.2d 382. In the same decision, however, the Louisiana Supreme Court reaffirmed its holding in State v. Jenkins, 1958, 236 La. 300, 107 So.2d 648.

In the *Jenkins* case the defendant was charged in a bill of information with violating an earlier version of the statute before this Court. The defendant was charged with being a member of the Communist Party knowing it to be a foreign subversive organization as defined in Section 366 of the statute. The prosecution argued that *Nelson* merely foreclosed acts of sedition against the United States alone. The Louisiana Supreme Court rejected the prosecution's position:

> "This contention cannot be sustained. A reading of the majority opinion in the *Nelson* case leaves no doubt that the ruling covers the entire area of communist activity, since communism in any form, even though directed against a local government, necessarily violates the Smith Act. Thus, in the case at bar, the charge that the accused has been guilty of subversive activity, in that she was a member of the Communist Party, in its essence includes seditious acts against the government of the United States (even though such violation had not been specifically alleged), for [fol. 112] our Communist Control Law (R.S. 14:358-365) like the Federal Communist Control Act, 50 U.S.C. §841 et seq., contains legislative declarations of fact that the Communist Party is dedicated to the overthrow of all organized government."

Uphaus upheld a contempt conviction of a witness for failure to produce a list of guests at a *public* summer camp suspected of being a communist front. The New Hampshire legislature had authorized the state attorney general to investigate the extent of subversive activities in the state. As the Supreme Court noted in *Gibson* v. *Florida Committee*: "[T]he claim to associational privacy in Uphaus was held to be 'tenuous at best', 360 U. S. at 80, since the disputed list was already a matter of public record by virtue of a generally applicable New Hampshire law requiring that places of accommodation, including the camp in question,

maintain a guest register open to public authorities. Thus, this Court noted that the registration statute 'made public at the inception the association they [the guests] now wish to keep private'. 360 U. S. at 81". 373 U. S. at 54.

I have no doubt of the validity of a state legislative investigation into the extent of communist or subversive activities within the state, provided that it is conducted with proper constitutional safeguards and does not impinge on areas preempted by Congress. Whether subversive persons are within a state, whether their activities constitute a threat to the state, and what kind of a threat are of proper concern to a State. Information relative to the subject is necessary for the State "to operate in areas not reached by federal authority". Texas v. Southeast Texas Chapter, ——, 358 S.W.2d 711. Thus *Uphaus* has been held to sanction state legislative inquiries into such local matters as the qualifications and fitness of the state's employees. Baggett v. Bullett, W.D.Wash. 1963, 215 F. Supp. [fol. 113] 439, 448, app. pending. Here the legislation and the State's acts against the plaintiffs go much further than New Hampshire's investigation in *Uphaus*.

The Louisiana Anti-Subversion Law, unlike the Criminal Anarchy Law, is directed at the same conduct proscribed by Congress. This is evident from the language of the statute. Thus, Section 358 states that the purpose of the legislation is to seek to meet problems created by the "world Communist movement". The preamble declares that "there exists a world Communist movement, directed by the Union of Soviet Socialist Republics and its satellites which has as its objective world control." After describing in some detail the conduct of this "world Communist movement", the law states that "the world Communist movement constitutes a clear and present danger to the citizens of the State of Louisiana. The public good and the general welfare of the citizens of the state require the immediate enactment of this measure." This is precisely the "conduct" which Congress has proscribed in the federal legislation. The preamble to the Internal Security Act, Title 50 § 781, in almost the identical language utilized by the Louisiana legislature, states that the purpose of the federal legislature is likewise

to meet the problem of "conduct" engendered by the "world Communist movement".

In Section 358 the legislature explains the state's concern with the conduct proscribed: "Since the State of Louisiana is the location of many of the nation's most vital military establishments, and since it is a producer of many of the most essential products for national defense, the State of Louisiana is a most probable target for those who seek by force and violence to overthrow constitutional government, and is in immediate danger of Communist espio- [fol. 114] nage, infiltration and sabotage." Thus the legislature's concern is with threats to the national interest and national security, with problems relating to the national defense and, indeed, with international relations.

In the years following the *Nelson* decision not a single state court criminal prosecution for alleged Communist activity has been sustained. See, for example, Commonwealth v. Gilbert, 1956, 334 Mass. 71, 134 N.E.2d 13; Braden v. Commonwealth, 1953, 291 S.W.2d 843 (Kentucky); Commonwealth v. Hood, 1956, 334 Mass. 76, 134 N.E.2d 12; Commonwealth v. Dolsen, 1957, 183 Pa. Sup. 339, 132 A.2d 692. These cases dealt with attempted enforcement of state sedition acts based upon charges that the defendants were engaged in communist activities or were members of communist organizations. Even where the charge was carefully *couched in terms of sedition against the state itself,* in applying the doctrines enunciated in *Nelson* the state courts uniformly held that charges of communist activity of necessity involved conduct proscribed by the federal legislation. For example, the Supreme Court of Massachusetts, in *Commonwealth v. Gilbert,* pointed out:

> "Although these things . . . are specified as pertaining to the overthrow of the government of this Commonwealth, it is evident that they are the familiar paraphernalia of communist agitation for the overthrow of government in general, and cannot be directed separately and exclusively against the government of this Commonwealth."

These cases all dealt with criminal prosecutions under state sedition laws. However, the Supreme Court of Michi-

gan, in Albertson v. Millard, 1956, 345 Mich. 519, 77 N.W.2d 104, faced directly the impact of the preemption doctrine upon a state law similar to the Louisiana law before this Court. Following the passage of the federal Internal Security Act several states enacted so-called "Little McCarran Acts", principally among them Alabama, Louisiana, Michigan and Texas. These statutes are attempts to cover [fol. 115] the areas governed by the Internal Security Act of 1950 and the Communist Control Act of 1954.

In *Albertson*, the Michigan Supreme Court struck down the Michigan Act on the ground that it was superseded by the existing federal legislation. The Court held that:

> "It is not necessary here to indulge in any extended or lengthy detailed comparison of the specific provisions of the Trucks Act with those of the Pennsylvania Act which the United States Supreme Court struck down in its entirety. No question has been raised here pointing to any substantial difference between the two."

Accordingly the Court ruled that:

> "The Congress of the United States has occupied the field entered by the Trucks Act to the extent that the federal act superseded the enforceability by the state of the provisions of said act."

In describing the impact of the Michigan decision upon the Alabama, Louisiana and Texas statutes, a recent commentator has written:

> "These statutes provide for registration of communist and subversive organizations, set out penalties for sabotage, and impose various disabilities upon registrants, such as exclusion from the ballot and from public office. Other states require registration but do not impose disabilities upon registrants. It is probable that most of the provisions of these statutes have been superseded by federal legislation. The registration statutes duplicate and enlarge the federal registration scheme. Nearly all of them differ from the federal scheme in one or more respects. Some are accompanied

by provisions outlawing the Communist Party. Because of the probable conflict of provisions, there is a much clearer case for preemption with reference to these statutes than there is with respect to the sedition statutes invalidated by the *Nelson* case. Hines v. Davidowitz, in which the Federal Alien Registration Act of 1940 was held to supersede a Pennsylvania alien registration statute, provides a close analogy. Moreover, the breadth and thoroughness of the federal scheme make it easier to infer a preemptive intent on the part of Congress. It is not surprising that the Michigan Supreme Court in *Albertson* v. *Attorney General* held that Michigan's comprehensive communist control law had been superseded by the similar provisions of federal communist control measures." Cramton, Supreme Court and State Power to Deal with Subversion and Loyalty, 43 Minn. L. R. 1025, 1034.

The possibility of subversive activities affecting a state [fol. 116] directly provides a basis for *bona fide* investigation and state legislation. But prosecutions for sedition based on an accused being a communist or a member of a communist front organization have been preempted by Congress. The scheme of federal regulation of Communist activities is so pervasive, the national interest so dominant, and the possibility of federal-state conflict so great that "the conclusion is inescapable that Congress has intended to occupy [this] field of sedition." *Commonwealth* v. *Nelson*, at page 504. *Uphaus* reaffirmed Nelson; it did not overrule *Nelson*. As long as *Nelson* stands, a State may not define as a crime the same *conduct* Congress proscribes, even though the State's indictment is limited to sedition against the State. There is no doubt as to the intent of the Louisiana legislature: In Section 390 the legislature explains that the statute was necessary because "the federal legislation on this subject is either inadequate in its scope or not being effectively enforced".

IV.

Should the Court proceed with the trial of this case and, on a proper showing, enjoin enforcement of the law?

A. The plaintiffs contend that since the law is unconstitutional as written and applied, that a federal district court has the power to proceed with the trial and, on a proper showing, should enjoin the enforcement of the law. The enforcement of the law, they contend, threatens immediate and irreparable injury to their federally protected constitutional rights. The same argument would apply if the Court should hold that congressional legislation superseded the Louisiana Anti-Subversion Law.

B. The Court's position is unclear. The majority opinion states that the "instant case postulates the basic constitutional issue whether prosecution in the state courts [fol. 117] . . . may properly be blocked and effectively thwarted by Federal action". But this is not a constitutional question at all. There is not the slightest doubt as to the constitutional power of a federal court to block prosecution in a state court under an unconstitutional statute. We need look only to the Supremacy Clause to resolve any doubt. And Congress set up the three-judge court for the precise purpose of passing on whether a federal district court *should* enjoin enforcement of a state law. Moreover, whether the state law is a civil or criminal statute is immaterial in terms of constitutionality.

As emphasized, a basic error in the Court's decision is its failure to distinguish between the type of case now before it and the run of the mine suit by a criminal offender asking for relief against unlawful State action. In the Civil Rights Act Congress established a distinct federal cause of action in favor of those whose constitutional rights have been invaded. 42 U.S.C.A. 1981, 1983, 1985. As a matter of law, since such cases involve a federal question, the right existed anyway. The fact that such cases involve a dispute over federally protected freedoms makes the federal court the appropriate forum for settlement of the dispute.

Assuming some latitude for decision under the doctrine of abstention, now developing as nicely as if Dr. Frankenstein were in charge of it, there is still not enough latitude in the doctrine to justify abstention in this case. It is true that generally speaking federal courts are loath to intervene in orderly criminal processes of a State. They do so only in exceptional cases. But here, allegedly, instead of proceeding in an orderly and regular manner, the complaint charges that the State is subverting its Anti-Subversion Law by using it to punish advocates of civil rights.

[fol. 118] Exceptional as this situation should be, there are enough cases now, I believe, for one to state that in this circuit our courts have established the following principle:

> Federal courts are slow in interfering with criminal proceedings in the ordinary case; for example, to take an obvious case, when a defendant argues that state proceedings should be halted while the federal court considers the validity of a search and seizure. But when the complaint alleges that a man is about to suffer irreparable injury from the State for asserting his basic constitutional rights, federal courts are under a duty to hold a hearing on the complaint and to decide the issues. If the state law is unconstitutional as written or applied, or has been superseded by congressional legislation, the Court should enjoin the enforcement of the law, whether the statute is of a civil or a criminal nature.

C. (1) The landmark authority on the power of a federal court to enjoin state enforcement of a law impairing a federal protected right is Ex Parte Young, 1908, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714, although recognition of such constitutional power goes back at least to Osborn v. Bank of the United States, 1824, 9 Wheat. 738, 6 L. Ed. 204. In *Ex Parte Young* the Supreme Court said:

> "[I]ndividuals who, as officers of the State, are clothed with some duty in regard to the enforcement of the laws of the State, and who threaten and are about to commence proceedings, *either of a civil or criminal nature*, to enforce against parties affected an unconstitu-

tional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

As noted in a recent treatise, "The effect of Ex parte Young is . . . to subject the states to the restrictions of the United States Constitution which they might otherwise be able safely to ignore. . . . [I]n perspective the doctrine of Ex parte Young seems indispensable to the establishment of constitutional government and the rule of law." Wright, Federal Courts § 48 (1963).

Jordan v. Hutcheson, 4 Cir. 1963, 323 F. 2d 597 is in- [fol. 119] structive here. In that case three Negro attorneys sued a committee of the Virginia State Legislature, its Chairman, counsel, and a process server of the City of Norfolk. The complaint alleged that under the guise of conducting lawful investigations but actually for the purpose of discouraging Negroes from asserting their civil rights in the courts, the defendants harassed and attempted to intimidate the plaintiffs, raided their offices, and published statements (as in the instant case) naming the plaintiffs as law violators. In a thorough, carefully documented opinion, which relies on a great many decisions of this circuit, the Fourth Circuit reversed the district court which had held that the complaint failed to state a cause of action. Judge Bell, for a unanimous court, said:

"The extent to which the state through its legislative power may intrude upon a citizen's rights becomes a matter for the consideration of the federal courts when such conduct invades the citizen's constitutional privileges. Whereupon the federal courts are commanded to act under the self executing provisions of the Fourteenth Amendment. We submit it would be impracticable to test the constitutionality of the state's conduct without considering its purpose. . . . *The concept of federalism: i.e., federal respect for state institutions, will not be permitted to shield an invasion of the citizen's constitutional rights.* Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). Certainly this principle has not shielded the activities of the executive and judicial branches of the state from inter-

diction when constitutional rights are involved. . . . Although the federal courts will recognize and respect the state's right to exercise through its legislature broad investigatory powers, nevertheless these powers are not unlimited and it remains the duty of the federal courts to protect the individual's constitutional rights from invasion either by state action or under color thereof. *Especially is this true in the sensitive areas of First Amendment rights and racial discrimination.* Where there exists the clear possibility of an immediate and irreparable injury to such rights by state legislative action the federal courts have exercised their equitable powers including the declaratory judgment and the injunction." (Emphasis added.)

(2) Courts in this circuit have repeatedly enjoined the enforcement of state laws where enforcement infringed on [fol. 120] federal rights. They have done so when the statute was unconstitutional on its face and when it was unconstitutional as applied. They have issued the injunction both before and after criminal prosecutions have been started.

In a strikingly analogous situation, in Bush v. Orleans Parish School Board, E. D. La. 1961, 194 F. Supp. 182, *aff'd* —— U.S. ——, a three-judge court, met directly the question of enjoining state court criminal proceedings and the enforcement of criminal statutes. Louisiana had enacted certain criminal laws designed in their operation, *but not on their face,* to deter Negro citizens from exercising their right to insist upon the desegregation of public education. The statutes created a new crime, "bribery of parents of children", and a companion crime, "intimidation and interference in the operation of schools". As in the instant case, the Attorney General of the State argued that Section 2283 and the policy of comity prohibited the federal court from enjoining these criminal prosecutions. The Court, enjoining a large number of state officers from the Governor on down, said:

"True, 'it is a familiar rule that courts of equity do not ordinarily restrain "criminal prosecution" *Douglas* v. *Jeannette* . . . But this rule cannot be applied mechan-

ically. *NAACP* v. *Bennett*, cf. *Doud* v. *Hodge*, 350 U. S. 485. Special circumstances will sometimes compel a federal court to act. *Truax* v. *Reich* 239 U. S. 33; *Pierce* v. *Society* 268 U. S. 510; *Hague* v. *CIO* 307 U. S. 496. . . . This is such a case. . . . The challenged statutes are not ordinary criminal provisions. . . . Placed in context, their mission is all too clear. These are the invidious weapons of a state administration dedicated to scuttling the modest program of desegregation which has been initiated in Orleans Parish. . . . Constitutionally unable to require racial segregation in the public schools, arrested in its plan to close the integrated schools, and unsuccessful in its boycott of these schools by other means, the State has now marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club." 194 F. Supp. at 185

[fol.121] In the most recent decision in point, Aelony v. Pace, Slip Opinion, Nov. 1, 1963, 32 L. W. 2215, Judge
[fol. 121] In the most recent decision in point, Aelony v. Tuttle, for a three-judge court held that a Georgia "insurrection statute" and an "unlawful assembly statute" were unconstitutional and granted an injunction forbidding prosecution of the plaintiffs under these laws. I point out that a state "insurrection" statute is preeminently a law enabling a State to protect itself against what the majority here calls the State's "basic right of self-preservation".

Browder v. Gayle, M. D. Ala. 1956, 142 F. Supp. 707, *aff'd per curiam* 352 U. S. 903, is a leading case. Judge Rives, for the Court, held:

"The defendants, . . . [urge that] the Federal court . . . should, in its discretion as a court of equity, and for reasons of comity, decline to exercise such jurisdiction until the State courts have ruled on the construction and validity of the statutes and ordinances. The short answer is, that doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal Courts have a responsibility as heavy as that which rests on the State courts."

Discussing *Browder* v. *Gayle* a panel of the Fifth Circuit (Chief Judge Hutcheson and Judges Tuttle and Jones) said, in a *per curiam* opinion:

> "That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U. S. C. A. § 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced. *To the extent that this is inconsistent with Douglas* v. *City of Jeannette, Pa., 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324, we must consider the earlier case modified.*" Morrison v. Davis, 5 Cir. 1958, 252 F. 2d 102, at 103.

[fol. 122] In United States v. Wood, 5 Cir. 1961, 295 F. 2d 772 a Registrar of Voters in a Mississippi County where there were no Negroes registered, without provocation, pulled out his revolver and ordered a Negro to leave his office. As he was leaving, the Registrar struck him on the back of his head with the revolver. The Negro had conducted a school for voting registration and had encouraged Negroes to register. He was charged with disturbing the peace. The Court of Appeals for this Circuit enjoined his prosecution not just on the violation of his rights but on the ground that the prosecution, "regardless of outcome, will effectively intimidate Negroes in the exercise of their right to vote". 295 F. 2d at 777. The Court pointed out that the Civil Rights Act, 42 U.S.C.A. 1971 expressly authorized injunctive relief against state criminal court proceedings and thus falls squarely within the stated exception to Section 2283. See also Cooper v. Hutchinson, 3 Cir. 1958, 184 F. 2d 119, holding that 42 U.S.C.A. 1983 authorizes an injunction against state court proceedings as an exception to Section 2283.

In City of Houston v. Dobbs Co., 5 Cir. 1956, 232 F. 2d 428, the Court affirmed the granting of permanent injunctive relief against the enforcement of a criminal ordinance of the City of Houston. Judge Tuttle, for the Court, said:

> "Appellant attacks the jurisdiction of the Court on the well recognized principle that courts will not normally enjoin the enforcement of criminal statutes or ordinances whose constitutionality is challenged. There is an equally well recognized exception to this rule as stated in the case cited by the appellant in its brief, *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89 where the Court says, 'to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary to afford adequate protection of constitutional rights. The case before us presents a clear illustration of such exceptional circumstances as would make the general rule inapplicable."

See also Denton v. City of Carrollton, Georgia, 5 Cir. 1956, [fol. 123] 235 F. 2d 481.

Moreover, as the Court held in Bailey v. Patterson, 5 Cir. 1963, —— F. 2d ——, "The law is crystal clear that they were not required to subject themselves to arrest in order to maintain this suit". In McNeese v. Board of Education, ——, 373 U. S. 668, —— S.Ct. ——, —— L.Ed. ——, the Supreme Court reviewed the purposes of Section 1983. The Court found that these were its purposes: to override certain kinds of state laws; to provide a remedy where state law was inadequate; to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice; and to provide a remedy in the federal courts supplementary to any remedy any state might have. The Supreme Court said: "We would defeat those purposes if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court". 373 U. S. at 672.

3. None of the decisions relied on in the majority opinion, present the all-important issue raised here that the State was subverting its laws in order to maintain its segregation policy.

In Watson v. Buck, 1940, 313 U. S. 387, 401, —— S.Ct. ——, 85 L. Ed. 1416, the Court stated that "exceptional circumstances" and "great and immediate" danger were not shown. Stefanelli v. Minard, 1951, 342 U. S. 117, 72 S. Ct. 118, 96 L. Ed. 138, was a run of the mine case in which a defendant asked that a federal court intervene in a state proceeding by suppressing the use of evidence allegedly secured by an unlawful search and seizure. The Court properly refused to interfere, particularly influenced by the consideration that it would be "interven[ing] piecemeal to try collateral issues." 342 U. S. at 123. In Cleary v. [fol. 124] Bolger, 1963, 371 U. S. 392, 83 S. Ct. 385, 9 L. Ed. 2d 390, the Court held that federal courts would not enjoin New York police officers from testifying where there was no evidence of an attempt to avoid federal requirements. The majority opinion cites Douglas v. City of Jeannette, Pa., ——, 319 U. S. 157, 63 S. Ct. 877, 87 L. Ed. 1324, but as stated in Morrison v. Davis, 1958, 252 F. 2d 102, 103, the Fifth Circuit gives that case a narrow reading in civil rights cases.

In short, the many decisions in this circuit in which the Court has firmly grasped the nettle argue strongly against the Court's too tender handling of the case.

V.

Chairman Pfister is quoted as saying that the plaintiffs were racial agitators. If that is true, and if the plaintiffs' modest agitation by mail was motivated only by the plaintiffs' interest in civil rights for Negroes, then, once again, as in *Bush* v. *Orleans Parish School Board,* the State has "marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club". Under any rational concept of federalism the federal district court has the primary responsibility and the duty to determine whether a state court proceeding is or is not a disguised effort to maintain the State's unyielding policy of segregation at the expense of the individual citizen's federally guaranteed rights and freedoms.

This Court should get on with its work.

[fol. 127] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION
Civil Action No. 14,019
Division "B"

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE EDUCATIONAL FUND, INC., Plaintiffs,

—against—.

JAMES H. PFISTER, individually and as Chairman of the Joint Legislative Committee on UnAmerican Activities of the Louisiana Legislature, RUSSELL R. WILLIE, individually and as Major of the Louisiana State Police Department, JIMMIE H. DAVIS, individually and as Governor of the State of Louisiana, JACK P. F. GREMILLION, individually and as Attorney General of the State of Louisiana, COLONEL THOMAS D. BURBANK, individually and as Commanding Officer of the Division of Louisiana State Police, and JIM GARRISON, individually and as District Attorney for the Parish of Orleans, State of Louisiana, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 31, 1964

I. Notice is hereby given that James A. Dombrowski and the Southern Conference Educational Fund, Inc., the plaintiffs herein, and Benjamin E. Smith and Bruce C. Waltzer, plaintiffs in intervention herein, hereby appeal to the Supreme Court of the United States from the order of this Court denying the motion for an interlocutory injunction, dissolving the temporary restraining order and dismissing the complaint for failure to state a cause of action, as set forth in the minute entry of January 10th, 1964.

This appeal is taken pursuant to 28 U.S.C. 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The verified complaint of plaintiffs Dombrowski and Southern Conference Educational Fund, Inc.
2. The motion for convening of a three-judge court
3. The order convening the three-judge court
4. The petition of intervention and complaint of Ben- [fol. 128] jamin E. Smith and Bruce C. Waltzer.
5. The motion and order granting a temporary restraining order of November 18th and as extended by Circuit Judge John Minor Wisdom.
6. The defendants' Motion to Dismiss.
7. The defendants' Answer to the Complaint.
8. The plaintiffs' Offer of Proof and attached affidavits and exhibits presented to the Court on January 10, 1964.
9. The minute entry of January 10, 1964, denying the motion for interlocutory relief, dissolving the temporary restraining order, and holding the complaint fails to state a cause of action.
10. The majority and dissenting opinions of the District Court Judges and the Circuit Judge, as soon as said opinions are filed.

III. The following questions are presented by this appeal:

1. Whether Louisiana Revised Statutes Title 14, Sections 358 through 374, the Louisiana "Subversive Activities and Communist Control Law" and Louisiana Revised Statutes Title 14, Section 390 through 390.8 the Louisiana "Communist Propaganda Control Law" have been superseded by federal legislation?

2. Whether the above Louisiana state statutes on their face violate the Constitution of the United States and, in particular, the First and Fourteenth Amendments thereto.

3. Whether the above Louisiana statutes as applied to the plaintiffs and intervenors herein violate the Constitution of the United States and, in particular, the First and Fourteenth Amendments thereto.

4. Whether the refusal of the majority of the three-judge district court to allow plaintiffs and intervenors to adduce any evidence as to the constitutionality of the aforesaid statutes, or as to the constitutionality of their application to the plaintiffs and intervenors was in error and [fol. 129] violated plaintiffs' and intervenors' rights to due process of law?

5. Whether the complaint stated a cause of action for relief under the laws and Constitution of the United States, and in particular under the Civil Rights Acts?

6. Whether the District Court had the power to enjoin the threatened state court criminal prosecutions of the plaintiffs and intervenors?

7. Whether 28 U.S.C. 2283 is any bar to the relief sought?

8. Whether the District Court should have granted interlocutory relief to protect fundamental federal rights guaranteed by the Constitution and laws of the United States and, in particular by the Fourteenth Amendment and the Civil Rights Acts from immediate and irreparable injury?

Milton E. Brener

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Attorneys for Intervenors, Hubert, Baldwin & Zibilich, 300 Oil & Gas Building, 1100 Tulane Avenue, New Orleans, Louisiana.

[fol. 130] Certificate of Service (omitted in printing).

[fol. 131] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

Civil Action No. 14,019

Division "B"

JAMES A. DOMBROWSKI, etc., Plaintiffs,

against

JAMES H. PFISTER, etc., Defendants.

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 27, 1964

1. The Notice of Appeal to the Supreme Court of the United States, previously filed herein, in behalf of James A. Dombrowski and the Southern Conference Educational Fund, Inc., plaintiffs, and Benjamin E. Smith and Bruce C. Waltzer, plaintiffs, is hereby amended by deleting therefrom Paragraph I and by substituting therefor the following Paragraph I:

"I. Notice is hereby given that James A. Dombrowski and the Southern Conference Educational Fund, Inc., the plaintiffs herein, and Benjamin E. Smith and Bruce C. Waltzer, plaintiffs in intervention herein, hereby appeal to the Supreme Court of the United States from the order of this Court denying the motion for an interlocutory injunction, dissolving the temporary restraining order and dismissing the complaint for failure to state a cause of action, as set forth in the minute entry of January 10th, 1964, and

the majority opinion and order of the Court entered herein on February 13, 1964.

This appeal is taken pursuant to 28 U.S.C. 1253."

[fol. 132] 2. All other provisions of the said Notice of Appeal to remain in full force and effect as set forth herein.

Milton E. Brener

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Attorneys for Intervenors, Hubert, Baldwin & Zibilich, 300 Oil & Gas Bldg., 1100 Tulane Avenue, New Orleans, Louisiana.

Certificate of Service (omitted in printing).

[fol. 133] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 134]

SUPREME COURT OF THE UNITED STATES

No. 941—October Term, 1963

JAMES A. DOMBROWSKI, et al., Appellants,

vs.

JAMES H. PFISTER, etc., et al.

ORDER NOTING PROBABLE JURISDICTION—June 15, 1964

Appeal from the United States District Court for the Eastern District of Louisiana.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Black took no part in the consideration or decision of this case.